

THE  
COMMONWEALTH  
OF NATIONS

AN INQUIRY INTO THE NATURE OF  
CITIZENSHIP IN THE BRITISH EMPIRE,  
AND INTO THE MUTUAL RELATIONS OF  
THE SEVERAL COMMUNITIES THEREOF

PART I

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## PREFACE

IN 1910 groups were formed in various centres in Canada, Australia, New Zealand and South Africa for studying the nature of citizenship in the British Empire, and the mutual relations of the several communities thereof. In course of time others were constituted in the United Kingdom, India and Newfoundland, and they all came to be known informally as 'Round Table Groups,' from the name of the quarterly review instituted by their members as a medium of mutual information on Imperial affairs.

The task of preparing or editing a comprehensive report on this subject was undertaken by the present writer. Preliminary studies were distributed to the groups for criticism, and their criticisms, when collected, were printed and circulated for their mutual information. On the basis of materials so gathered, the final report was projected in three principal parts. In Part I. it was proposed to deal with the question how and why the British Commonwealth came to exist, to trace the causes which led to its disruption in 1783, and to the establishment of a separate commonwealth in America. The subsequent growth of the dismembered Commonwealth was to be dealt with in Part II. In Part III. it was proposed to examine the principles upon which, and the means whereby, the members of its widely

scattered communities can hope to retain their present status as British citizens in a common state.

Part I. was prepared in five instalments, four of which were completed before the war. Each instalment was printed and circulated to the groups as it was finished. The text was revised in the light of the corrections and criticisms sent in, and at the close of 1914 was reprinted for private circulation under the title of *The Project of a Commonwealth, Part I.*

Meanwhile, in view of the situation created by the war, it was decided to anticipate the completion of the main report by a brief study of that aspect of the subject which most nearly concerns the self-governing Dominions. This short volume has now been published under the title of *The Problem of the Commonwealth*. Part I. of the larger work is now given to the public in order that students may examine the foundations upon which the conclusions adduced in *The Problem of the Commonwealth* are based. To avoid confusion with the smaller volume, the title of the main report has been changed to *The Commonwealth of Nations*.

The Round Table groups were organized for the purpose of study, and men representing every shade of opinion joined them, on the understanding that they would not be committed to conclusions of any kind. The only way in which this understanding can be observed in the spirit, as well as in the letter, is for the editor to make himself solely responsible for producing these reports, and for all they contain. They must not be presumed to express the opinions of any Round Table group, or member of such group, other than himself. On the other hand, it must be emphatically stated that the main report is the work of various brains and pens. It is the product not of one writer but of many working in close collaboration. No single brain could master the facts required for an adequate

survey of the complicated polity which embraces a quarter of the human race. However, for the reasons given above, the editor must be treated as the sole target of criticism.

For further information with regard to these reports the reader is referred to the preface of *The Problem of the Commonwealth* already published.

L. Curtis.

*April 1916.*

## NOTE ON THE DESIGN OF THE COVER

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At the corners are insignia of the four parts of the United Kingdom. On the top is the Star of India, at the bottom the sphinx, symbolic of Egypt. On the left, the cod-fish typifies Newfoundland, the maple leaf Canada, the fleur-de-lis Quebec, the five-starred Southern Cross Australia, while the palm tree, shell and pine apple suggest the numerous islands in the West Indies and the Southern Seas. On the right, the negro's head is to signify Tropical Africa. The four-starred Southern Cross is the crest of New Zealand, and the trek-wagon that of the Transvaal. The anchor, as representing the Cape of Good Hope, together with the Southern Cross, stands for South Africa, while Rhodesia is signified by the Zimbabwe bird. A number of these ancient figures were found sculptured on the top of soap-stone posts on the ruins of Zimbabwe in Rhodesia, and there can be little doubt that they formed a link with the ancient civilization of Northern Africa. Some were brought to Capetown and one was placed in the Chamber where the Cabinet sat; and the councillors were at times reminded by Rhodes that they spoke in the presence of three thousand years. Wooden reproductions of these birds were introduced by the designer of this cover as terminals on the great staircase of Grootshuur, the famous house which Rhodes built at the Cape and afterwards left as a residence for the Prime Minister of a future South African Union.

The enveloping sea is expressed by a wave pattern, familiar to students of Maori art, and this also encircles the Commonwealth crown. Its numerous islands are represented by pearls. The ships are a reminder of the disciplined power which has given security to the Commonwealth and maintained law upon the sea. In place of the usual cushion at the base, a fringe of sharp points denotes what manner of crown it is that citizens of a true Commonwealth must wear. On the back is shown another aspect of the Crown. Some of the symbols, like those used for Rhodesia and Newfoundland, are not the official insignia of the countries for which they stand. Symbolism and decorative art have nowhere been sacrificed to the technical rules of heraldic lore.

L. C.

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## GENERAL INTRODUCTION

ON the sheet opposite this page the population of the globe, represented in graphic form, is divided into the communities which are recognized by each other as sovereign states. Upon opening this diagram the reader is at once impressed by the fact that two such states contain between them no less than half mankind. The Chinese Empire includes about one quarter of the human race, and the British Empire another quarter.<sup>1</sup>

### INTRODUCTION

The Chinese Empire and the British Empire contain each one quarter of mankind.

Here, however, the resemblance ends, and the essential difference in the character of the two Empires is clearly shown by a glance at the map of the world as presented in Plate II.<sup>2</sup> The people of China are one race inhabiting one country. They constitute, as it were, an important wing of the social edifice. In the British Empire, on the other hand, are comprised people of every gradation in the human scale. The point is more clearly brought out by Plate III., which represents in some detail the various elements of which it is composed.

But the one is uniform and the other heterogeneous.

In Plate IV. the squares shown on the first diagram are redistributed so as to appear in the same relative positions as they occupy in the map on Plate II., with the result that the Chinese Empire still appears as a solid wing of the human race, while the British Empire must be compared rather to a framework wrought from

The destruction of the British Empire would dislocate human society.

<sup>1</sup> See Note on page opposite.

<sup>2</sup> Plates II., III., and IV. will be found at the end of the volume.

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The  
British  
Empire  
almost  
as various  
in its com-  
position as  
mankind  
itself.

all its materials and ramifying through every part of its complicated structure. The disruption of China would seriously affect the rest of the world ; but the collapse of the British Empire would be followed by results incalculably greater, and it is no exaggeration to say that it would convulse the whole fabric of human society. If the dismemberment of Turkey be thought to endanger the peace of the world, what consequences are to be looked for if an Empire, so much more orderly as it is more vast and widely spread, were suddenly to be broken up ?

But the special feature of this great international state, upon which it is desired to dwell for the moment, is the variety of the elements which it connects. Mankind may be compared to a stratified formation consisting of a series of graduated layers. The Chinese Empire is a state cut from the thickest of these layers. The British Empire is a section of humanity cut from top to bottom, and a sample of every typical layer is contained in its jurisdiction. As the map before us shows, it includes the native inhabitants of every continent. In the light of modern discoveries it can be stated without hesitation that the earth has contained intelligent human beings for not less than 500,000 years. It is only in the brief centuries at the close of this æon that means have been devised of establishing regular intercourse between the continents. For ages longer than the human imagination can picture the inhabitants of the different continents have lived in water-tight compartments, developing apart and influencing each other little or not at all in the process. In the main, therefore, the different stages of human development coincided, and to some extent still coincide, with continents or groups of continents. The tribal system is typical of the aborigines of Africa, Oceania, and America. The ancient monarchies of Mexico and Peru represent a sporadic advance beyond

that system, which owing to their extinction failed to affect the course of history. Another exception is Egypt, whose ancient civilization, isolated by desert frontiers in the west, has a nearer affinity to the social system of Asia than to that of Africa. Apart from these exceptions the organization of the state had not been realized in the three more backward continents whose inhabitants had failed to advance beyond the tribal stage of society. The British Empire is composed of people in both these stages of development, and also of Europeans whose ideas have produced a type of state essentially different from that evolved by Asia. It is necessary to consider, therefore, what the tribal system means, how it differs from the state, and how the Asiatic conception of the state differs from that peculiar to Europe. For the effect which these types of society have had on each other when brought into contact is one of the principal causes which have led to the creation of the Empire.

The bond which unites the tribe or clan is that of the family on an extended scale, the chief exercising a parental authority in virtue of his inherited position as head of the house. 'It needs no argument,' as Lecky remarks, 'to show how incompatible with all national unity'<sup>1</sup> is this primitive principle of organization, and the races which have not advanced beyond it are correctly described as 'uncivilized.' Asia, on the other hand, is regarded as the home of civilization, and 'the state,' in its primitive form of theocracy, has been its characteristic type of political organization. The great Semitic and Mongolian races have perhaps no closer affinity to each other in descent than to the natives of America or Africa. But in the course of their development the peoples of Asia have so influenced each other as to produce certain characteristics common to Asiatic society. In spite of all that has

Tribal and  
political  
organiza-  
tions dis-  
tinguished.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. ii. p. 267.

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been said and written to the contrary, the popular habit of applying the term 'Oriental' to all the races who live between the Pacific and the Levant is justified by the facts. It bears witness to the existence of some common feature which differentiates them from the natives of Africa, Oceania, and America on the one hand, and from the natives of Europe on the other.

Develop-  
ment in  
Asia of the  
state in its  
primitive  
form of  
theocracy.

The Biblical writings, which render the ordinary reader more familiar with the social conditions of the East than he is apt to realize, reveal one of its races emerging from the tribal condition and reorganizing itself on the principle of a typical theocratic state. The children of Israel are represented in the Book of Judges as conscious of a certain unity by reason of their common descent from Abraham, Isaac, and Jacob. But already they have grown too numerous to render obedience to any one descendant or representative of the common patriarchs. They are split into twelve tribes named after the sons of Israel, and already one of these tribes, that of Joseph, has subdivided into two others named after his sons Ephraim and Manasseh. These tribes, having no government in common, are given to internecine feuds with each other, and are likewise exposed to periodic conquest and oppression by peoples like the Philistines or Amalekites, who have already succeeded in organizing themselves as states. From time to time they are delivered by some hero whose individual genius or prowess enables him temporarily to command the obedience of several tribes. Gradually they are driven by internal disorder and external pressure to realize a national organization, and to establish it on a permanent footing by recognizing Saul the Benjamite as King over all Israel. By the author of the Book of Samuel the creation of the Hebrew monarchy is represented as a concession to popular clamour. But that concession having been made, the kingship is



founded from first to last on divine authority. 'Is it not because the Lord hath anointed thee to be Captain over his inheritance?' cries the seer, as he pours the consecrated oil on Saul's head. The whole duty of the Hebrew is comprehended in his unbounded obligation to obey the God of Israel. It is only as his vicegerent that the kings are entitled to their obedience, and it is their duty to God which unites them as a people and enables them to rise above their tribal organization and to constitute themselves as a state.

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A religious consciousness so strong as sometimes to overwhelm him is indeed the distinctive mark of the Oriental. He stands like one who, gazing into the sun, becomes almost blind to the world about him, and to the ground beneath his feet. His sense of his relation to the spiritual world is so vivid as to obscure the reality of mundane things in which the typical European is often preoccupied overmuch. He is so absorbed in the thought of his duty to God that he partly forgets to identify it with his duty to his fellow-men other than those united to him by caste, family or similar ties.<sup>1</sup> Throughout the East the force which united peoples in obedience to their government has been mainly religious. And this is true of races so distant and different from the Semitic people as the Chinese and Japanese. In China, as a well-informed writer in *The Times* has remarked, 'the permanency of birth privileges is allowed to the Royal Family, not because it fulfils the functions of an autocracy, but because it embodies the conception of the nation as one family with a permanent relation to the will of Heaven, which so ordained the social nature of man.'<sup>2</sup> In Japan the Mikado is revered by the majority as a visible deity. The

Oriental  
united in  
obedience  
to govern-  
ment and  
law by  
religious  
feeling.

<sup>1</sup> Meredith Townshend, *Asia and Europe*, pp. 14-15.

<sup>2</sup> "Confucianism and the Republic in China," *The Times*, Sept. 24, 1912.

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devotion with which he is served is unbounded, but it is not to be entirely identified, as it often is, with patriotism as understood by Western peoples. Throughout the East obedience has been rendered to authority primarily as a religious duty. Rulers when not revered as actually divine have been regarded as vicegerents of God appointed to enunciate His mandates and to enforce them. 'Rebellion is as the sin of witchcraft'—the deliberate service of God's enemy the devil. To unfaithful kings God ceases to reveal His commands. This silence is the first punishment inflicted on Saul for disobedience. Driven to despair for want of guidance in his difficulties, he invokes the aid of a witch, and cries to the ghost of Samuel summoned by incantations from his grave: 'God is departed from me and answereth me no more, neither by prophets nor by dreams: therefore I have called thee that thou mayest make known unto me what I shall do.'<sup>1</sup>

Absolute  
claim to  
obedience  
the dis-  
tinctive  
principle  
of the  
state.

Briefly we may say that the theocratic state is the distinctive product of the peoples of Asia, and represents an important advance on the merely tribal organization of primitive man. The state differs from any other form of human organization in that the authority which it claims over the conduct of its members is unlimited. It assumes the right to deprive them in the public interest of their property, of their liberty, and of their lives, and it is only while that claim is admitted to a sufficient extent by a sufficient number of its members that the state can exist. For, to put the matter in a nutshell, government can only continue so long as it can depend upon the willingness of a sufficient number of its subjects to sacrifice their lives to the enforcement of its commands. The tribe is an embryonic state limited by the fact that its essential bond of

<sup>1</sup> 1 Samuel xxviii. 15.

blood relation arrests its development at the point beyond which its members cease to be sensible of their kinship. The overpowering sense of religion developed in Asia made it possible to unite any number of tribes in obedience to a ruler accepted as the appointed instrument and mouthpiece of the divine authority and recognized as entitled to the absolute obedience of each and all. Such unions were usually effected by the sword of a conqueror. But the conqueror's power was regarded as the manifest token of divine authority behind him. The sword might collect the elements of a state, but until some sense of a duty to obey was developed they could not cohere. The belief that physical power was the evidence of divine authority has enabled the people of Asia to emerge from the tribal stage and constitute states on the primitive basis of theocracy.

To the Oriental mind the wisdom of rulers was, as in the case of King Solomon, less the product of experience than a gift from on high. The idea of the people themselves through their representatives attaining to a right judgment in matters of state in the light of their own experience was foreign to Eastern thought. Nowadays the theocratic tradition may sometimes be seen at work behind the thin veil of a Western constitution. On several occasions the Japanese Government has silenced parliamentary opposition by declaring that it disturbed the Emperor's ancestors, and when this expedient failed the parliament has been overruled by an Imperial rescript which the people regarded as much more binding upon them than the acts of their own representatives. It is easy to see how theocratic ideas tend to the government of one man. Autocracy has therefore been the form of government natural to Asia.

On the other hand, it is necessary to avoid the fallacy of supposing that an autocracy, as con-

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Theocratic  
ideas  
tend to  
autocracy,  
the form  
of state  
typical of  
Asia.

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States, whether auto-cracies or common-wealths, ultimately rest on duty, not on self-interest or force.

trusted with a commonwealth, is based upon force. To argue that the government of one man over millions can rest upon force is an absurdity from the outset. Force is the sword of government, but what nerves the hand that wields the sword is not and cannot in the last analysis be force. And this is just as true of a despotism as of a republic. The quickening principle of a state is a sense of devotion, an adequate recognition somewhere in the minds of its subjects that their own interests are subordinate to those of the state. The bond which unites them and constitutes them collectively as a state is, to use the words of Lincoln, in the nature of *dedication*. Its validity, like that of the marriage tie, is at root not contractual but sacramental. Its foundation is not self-interest, but rather some sense of obligation, however conceived, which is strong enough to overmaster self-interest. Amongst the peoples of Asia the necessary motive was, and still is, supplied by their overpowering sense of man's duty to God.

Why the West has been amenable to change while the East resisted it.

It is a commonplace that states had developed and civilizations were flourishing in Asia at a period when Europe was still plunged in a barbarism as primitive as that prevailing in the other continents. European history comes well within the limit of the last three thousand years; but if the social conditions of Asia at the beginning and end of that period were to be described, the difference in the two descriptions would not be great, and that difference would be largely due to the effect of Europe on Asia. A similar comparison in the case of Europe would show an immeasurable change in social conditions between then and now. The Balkan Peninsula, where this change would be least remarkable, is the one portion of Europe which has fallen under the influence of an Oriental race. That Asia has remained almost stationary while Europe has been changing beyond

recognition is one of the great facts of the world, the significance of which we cannot evade and must endeavour to understand. It is a fact which, indeed, is not unrelated to the political conceptions of the East which we have just been discussing. Custom and law are the framework of society, and, in so far as they are held to be divine, the idea of changing them is regarded as impious. The Medes and Persians were typical Orientals in their idea that the law cannot be altered even in response to the experience which people subject to the laws have gained. In India the difficulty of altering the sacred law constantly impedes the reforming zeal of the government. 'In Turkey, the Sultan, though Sovereign, is subject to the Sheriat or Sacred Law, which he cannot alter; and which no power exists capable of altering. A good deal may be done in the way of interpretation; and the desired Fetwa or solemnly rendered opinion of the Chief Mufti or Sheik-ul-Islam can generally be obtained by adequate extra-legal pressure on the Sultan's part. But no Sultan would venture to extort, and probably no Mufti to render, a Fetwa in the teeth of some sentence of the Koran itself, which, with the Traditions, is the ultimate source of the Sacred Law, binding all Muslims always and everywhere.'<sup>1</sup> The natural fatalism of the Oriental is thus fostered by the notions underlying theocracy. Whatever form his religion takes he tends to regard himself and his kind as puppets of forces which are entirely beyond human control. Believing himself to be the slave of destiny he does in fact become so. The consequence is that any society inclines to be static so far as it rests on ideas which are narrowly religious rather than moral.

The outlook of modern Europe differs from that of the East especially in the greater emphasis which

<sup>1</sup> Bryce, *Studies in History and Jurisprudence*, vol. ii. pp. 58-59.

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Europe  
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entiated  
by concep-  
tion of  
free-will  
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to men.

it lays on the duty of men to themselves and to each other. This divergence has doubtless been fostered by a religion which sprang from Asia itself, yet found its congenial soil not there but in Europe, and it may almost be said that the difference between the Mosaic law and the Sermon on the Mount measures the difference between Eastern and Western ideals. Men cannot feel, and go on feeling, a sense of responsibility for the society in which they live, unless they are also conscious of some power to alter its condition and their own for better or worse. Some deeply rooted belief in the efficacy of free will has delivered Europe from what Bryce calls 'the isolation and narrowness and general exclusiveness which has checked the growth of the earlier civilizations of the world, and which we now see lying like a weight upon the kingdoms of the East.'<sup>1</sup>

There is perhaps in literature no phrase which conveys more perfectly the distinctive Western outlook on life than that put by Shakespeare into the mouth of Cassius :—

Men at some time are masters of their fates :  
The fault, dear Brutus, is not in our stars  
But in ourselves, that we are underlings.

This confidence of the European in his own power to control circumstance has encouraged exercise of the power and led to its development. The Oriental regarding the framework of society as divinely ordained has treated man as though he were made for the law : the European has treated the law as though it were made for man, as a framework which must not be allowed to cramp social methods and habits, but which must, when necessary, be modified to suit, and indeed to foster, change.

The idea that the law is human and subject to

<sup>1</sup> Bryce, *Holy Roman Empire*, p. 433.

alteration has necessarily led to a conception that the changes must be effected in accordance with the experience of the people it affects, determined so far as possible by themselves, and ultimately in accordance with their will. But the essence of a law is that it is a rule controlling the conduct of a number of people, and it obviously cannot be modified to suit the interest, or in response to the will, of each separate individual. The European conception of government, therefore, assumes the possibility of a public opinion which is as much entitled to prevail over individual wills as the edict of an autocrat to command the unhesitating obedience of his subjects. But, to command obedience, public opinion must be capable of formulation in terms as precise as those of an edict. The further assumption is therefore involved that a certain number of citizens are capable of formulating public opinion in the light of experience. To do this they must have some intellectual capacity for judging the public interest, and, what is no less important, some moral capacity for treating it as paramount to their own. It follows that all citizens who have the necessary qualifications ought, in the interests of the whole community, to be admitted to a share in the work of formulating public opinion. The principle is one which travels in the direction of democracy as naturally as the theocratic principle travels towards despotism.

This briefly is the principle of the commonwealth, and its fundamental notion is that society is at its best when able and free to adapt its own structure to conditions as they change, in accordance with its own experience of those conditions. Freedom is the power of society to control circumstance, and that is why freedom and the institution of the commonwealth are linked inseparably, and together

# INTRODUCTION

The principle of the commonwealth, the natural product of this attitude of mind.

Freedom and the principle of the commonwealth are correlative ideas.

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constitute the distinctive ideal of Western civilization. Blazing forth in the morning of history with a startling but transitory brilliance, the principle of the commonwealth has with many vicissitudes gradually prevailed over that of theocracy in Europe, and already shows promise of extending the contest to Asia itself. This struggle of principles, each nobler than that which it superseded, is in truth the ultimate theme of history.

Europe by bringing the different continents into touch raised the problem of determining their mutual relations.

The recognition of Europe as a continent separate from Asia is not due to the fact that they are nearly or altogether divided by sea, as are Africa, America and Australia from both of them. Eurasia is one great continent, and the habit of subdividing it into two is due to consciousness of something which differentiates the society at its western area from that east of the Ural Mountains. The consciousness of this difference is comparatively speaking a recent one. For the last few thousand years the people of Europe have displayed a continuous energy coupled with a peculiar capacity for collecting experience and bringing it to bear upon the conditions of human life. Climate and the conformation of the shores surrounding the Mediterranean were amongst the causes which fostered the development of these faculties. For our purpose, however, it is sufficient to note that when history opens we find in Greece a people whose ideas and habits have begun to differ from those of Asia, and have brought into being institutions for which no counterpart can be found in the East. The Greeks developed the faculty of change, and the Romans created conditions which have enabled it to spread in a greater or less degree to the races west of the Ural Mountains. The history of Europe deals with the series of struggles in which this peculiar faculty asserted itself and produced the civilization which has distinguished the people of Europe from those of



Asia. But history is something more than the history of Europe, and no view of politics can be final which does not include the whole of mankind. The human race is spread over five continents, each of which has its own history and level of development; and how to adjust their relations to each other is the ultimate problem of politics. The problem arises from the fact that one has become versatile while the rest have remained comparatively static. While the faculty of progress was still fighting for existence in Europe, Europe itself was continually called upon to fight for existence against some power which threatened it from Asia. Numbers were on the side of Asia, but the increasing control which Europe achieved over moral as well as over physical forces in the end secured her against destruction. But the same increasing control over nature began to open a new and wider range of problems. By the close of the Middle Ages practical improvements in navigation had converted the oceans from barriers into highways, and in the next few centuries Europe, which had touched Asia on one side only, began to invade the monarchies of the further East and the primitive communes of Africa, America, Australasia, and the Pacific Isles. Nay more, she brought them into touch with each other, and in a few centuries the primeval seclusion of the most ancient societies was broken up. Partitions which had ever divided the families of mankind were rapidly breached, and it needs no argument to prove that the fundamental problem of the age arises from the necessity of adjusting the relations of the one to the other.

Frankly, we must realize that the first effect of European civilization on the older societies is disruptive. In the course of this inquiry we shall see how the ancient despotisms of the East corrode when they come into contact with Western commerce and

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Disturb-  
ing effect  
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between  
the races  
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finance, and how civilized conceptions of law dislocate the communal systems natural to primitive man. The older societies, hard and dry with age, burst when the still-fermenting wine of European civilization is suddenly poured into them. The contents, moreover, of the old bottles are poured into each other and mixed together. The races of Africa are transplanted wholesale to the Americas. In Africa, and on the shores and islands washed by the Pacific, the peoples of Asia begin to establish colonies of their own, and on new ground the old struggle for existence between the civilizations of Europe and Asia begins again.

The  
British  
Empire  
the  
product  
of these  
problems.

The magnitude and delicacy of the problems raised by changes which rapidly brought into touch with each other the isolated races of mankind is evident, and we have only to look at the composition of the British Empire to see that its structure is a practical attempt to supply a solution of some of them. It consists of separate territories which together cover more than one-fifth of the land surface of the planet, and contain about a quarter of its population. These are distributed amongst some fifty subordinate states in which are represented all the races and gradations of human society, and all these it correlates within the jurisdiction of one paramount state.

The  
British  
Empire is  
recognized  
as a single  
state by  
those out-  
side it.

But are we justified in describing the British Empire as a state? To answer that question we must ask ourselves what the attributes of a state are. Human life is mainly concerned with adjusting the relations of men, or communities of men, to each other. When the interests or ideals of two individuals or communities conflict beyond the hope of agreement, they may be settled either by the strength of the stronger, that is to say by violence or the threat of violence, or else by the authority of law. The state is an institution designed to adjust the relations of its component members or communities without violence,

or at least by the use of only so much as may be necessary to enforce the authority of law. The British Empire determines by the peaceful methods of law the relations of a large number of races and communities, and in this sense it is a state. It does in practice secure that none of its component states shall engage in war with any other, whether inside or outside the limits of its jurisdiction. No foreign state can make war on any of them without being at war with all of them together. Any attempt, for instance, on the part of China to invade Fiji would involve the arrest of Chinese ships which happened at the moment when war was declared to be lying in the ports of Canada or South Africa. This empire, including a quarter of the human race, is in fact a state from the international point of view.

The obedience which these various communities representing the successive stages of human progress severally yield to the Imperial sovereignty is conceived in a manner natural to the social ideas of each of them. To the tribes of America, Africa, and the Pacific Islands, with their patriarchal ideas, it was natural to speak of Queen Victoria as 'The Great White Mother.' By the people of India the monarchy is thought of 'as a divine institution, a sacred office, not to be assailed or criticized without a tinge of impiety.'<sup>1</sup> And yet the supreme government of the state is based upon principles typical of Europe in direct antithesis to those understood by the races from which seven-eighths of its subjects are drawn. The British monarch is, in fact, neither patriarch nor autocrat, but the hereditary president of a commonwealth. But in this commonwealth the governing power is practically restricted to citizens of European origin. It is not extended, even for local purposes, to any of the Dependencies great or

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It is also a state framed on the principle of the commonwealth, though the great majority of its citizens cannot as yet understand that principle or realize it for themselves.

<sup>1</sup> "The Durbar and After," *Round Table*, No. VII. vol. ii. p. 397.

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small, for the sufficient reason that the institutions of a commonwealth cannot be successfully worked by peoples whose ideas are still those of a theocratic or patriarchal society. The premature extension of representative institutions throughout the Empire would be the shortest road to anarchy. But this present restriction of the franchise to the people of European origin no more deprives the Imperial state of its essential character of a commonwealth than the analogous restriction of the franchise to adults. In order to alter the system of government familiar to the East the ideas and customs out of which that system has grown must be altered first, and it is safe to assume that the masses of India will not have so changed their habits of life as to enable them within the period of the present generation to assume a complete responsibility for the management of their own domestic affairs. But this obviously they must do before attempting to assume the still higher and more difficult responsibility for the affairs of the Empire as a whole. It is not therefore within the scope of an inquiry, exclusively practical in its object, to consider how or when the Dependencies are to be associated in the government of the Imperial Commonwealth.<sup>1</sup>

But when viewed from within the British Empire loses the character of a state and fails to realize the principle of a commonwealth.

The exclusion of an increasing portion of the European citizens of the Empire from a share in its stupendous responsibilities is the importunate question whose settlement must precede all others. One quarter of them are distributed between the Dominions of Canada, Australia, South Africa, New Zealand, and Newfoundland. Within the limits of those territories their several populations control their own internal affairs. In the general govern-

<sup>1</sup> Since visiting India I have seen reasons to modify the view expressed in this sentence, which was written in 1912. I hope to give those reasons in the next volume.—EDITOR, Delhi, March 1917.

ment of the Empire, however, they exercise no voice whatever, and, contrariwise, the Imperial Government has no power in fact of commanding their resources for the maintenance of the Imperial Commonwealth. Viewed from without, the British Empire is a single state with a single government, in practice just as competent to commit all its subjects to peace or war as the Governments of Russia, Germany, or the United States. But it cannot, like them, command the resources of all its subjects and territories in the discharge of its responsibilities. As the people of the Dominions have no voice in the government of the Empire, so are they not subject to contribute to its necessities. Viewed from within, the Empire lacks that property of states by which they proportion the expenditure of their resources to the responsibilities which the possession of those resources involves. It is a commonwealth which excludes from a share in its government an increasing proportion of citizens in no way less qualified for the task than those whom it admits to it. It is a state, yet not a state; a commonwealth, yet one which fails to realize an essential condition of the principle which inspires it. Can it continue in this condition, and if not, is it to develop the structure of a state and to fulfil the conditions of a commonwealth, or is it to be broken up into a number of states? And if so broken up, can the parent state continue single-handed to maintain a stable equilibrium between these multitudinous races and civilizations, and to adjust their relations with the other three-quarters of the human race? No question more momentous has ever been proposed, for upon its solution depends the stability, not merely of this Empire itself, but of the whole structure of the world's society through which it extends. To attempt an answer to this question without first inquiring what the British Empire is

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and what function it fulfils is to court failure from the outset. For as with every institution, it is only to be understood in the light of history and especially of events which caused and therefore preceded its creation. It will be necessary, then, to take a rapid glance at the history of Europe, more especially in its relations to Asia, before the British Empire itself appeared upon the scene.

Plan of the  
inquiry  
described.

The first part of this inquiry traces the growth of the Commonwealth to the great schism which so nearly destroyed it at the close of the eighteenth century. The second, dealing with the subsequent growth of the British Empire, is an attempt to see India, Egypt, Canada, Australia, New Zealand and South Africa as they now are. In these two parts an endeavour is made to understand the various parts of the Empire, and how they are related to each other and the whole. Whether those relations are satisfactory, and how far they now require to be changed, are questions to be discussed in the third and final part of the inquiry.

## CHAPTER I

### EARLIER RELATIONS OF EAST AND WEST

A TRIBAL society is highly unstable, because each tribe tends to split up as soon as it outgrows the limits of a magnified family. Where, however, the chief sanction of government is religion, the community can continue to expand so long as the territories it covers are not too wide for the ruler's commands to be conveyed to his subjects. Asia thus became the home of enormous states; it was a continent in which vast multitudes were ruled by a few despots.

European history begins with the Greeks, and the opening pages of their literature tell of a people who differ not in degree but in kind from those of Asia because they are no longer dominated by habit. The frontispiece of that literature is a portrait of Odysseus, of a man living by his wits, a man to whom the things of this world matter, and are in some sort amenable to control. The typical Greek hero is no slave of destiny, but one who masters it by the resources of an unconquerable mind. But the Asiatic idea that authority must rest on a supernatural basis survives amongst the Homeric Greeks, for their kings are always in some way descended from the gods. So strong is the religious idea indeed that they can think of themselves as united in the siege of Troy, as in later times they were never united, by common loyalty to a paramount king.

At a later period, when legend gives way to history,

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The theocratic principle tends to the creation of states on a great scale.

The differentiation of Europe from Asia first took form amongst the Greeks, and in the new type of state they developed.

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these theocratic ideas have already receded into the background, and the Greeks have moved on to political conceptions of their own for which no precedent was to be found in Asia. These were the product of the small communities centreing round fortified cities, into which the Greeks were divided by their mountains and seas. In these small neighbourhoods was developed an *esprit de corps* that bound society by ties different from the feeling that to question the authority of 'powers and principalities' is impious. The Greek was religious, but the dominating factor in his political life was not religion but enthusiasm for his city, which to his eye was made, not of walls, but of his fellow citizens. And to the welfare of that city so conceived he was prepared to dedicate not merely his property and his energy but life itself. It was in Athens that the Greek spirit reached its typical development; and as one of their enemies said of the Athenians, 'They spend their bodies, as mere external tools, in the city's service, and count their minds as most truly their own when employed on her behalf.'<sup>1</sup>

The Greek state based on the dedication of men to each other.

The speech delivered by their greatest statesman, Pericles, at the funeral of some of them who had died for their city is instinct with this spirit of dedication. 'Such were the men who lie here and such the city which inspired them. We survivors may pray to be spared their bitter hour, but must disdain to meet the foe with a spirit less triumphant. Let us draw strength, not merely from twice-told arguments—how fair and noble a thing it is to show courage in battle—but from the busy spectacle of our great city's life as we have it before us day by day, falling in love with her as we see her, and remembering that all this greatness she owes to

<sup>1</sup> Thucydides i. 70.



men with the fighter's daring, the wise man's understanding of his duty, and the good man's self-discipline in its performance—to men who, if they failed in any ordeal, disdained to deprive the city of their services, but sacrificed their lives as the best offerings on her behalf. So they gave their bodies to the commonwealth and received, each for his own memory, praise that will never die, and with it the grandest of all sepulchres, not that in which their mortal bones are laid, but a home in the minds of men, where their glory remains fresh to stir to speech or action as the occasion comes by. For the whole earth is the sepulchre of famous men; and their story is not graven only on stone over their native earth, but lives on far away, without visible symbol, woven into the stuff of other men's lives.<sup>1</sup>

Here is a spirit of devotion no less absolute than that which inspired the obedience rendered by an Asiatic to a monarch whom he thought of as the delegate of God. But in Athens that obedience was rendered by the citizen to the will not of a despot but of his fellow citizens. How absolute was a Greek's conception of the obedience due from himself to the state may be gathered from the reasons given by the greatest of Athenian citizens for declining to evade an unjust sentence of death. 'Consider it in this way: Suppose the laws and the Commonwealth were to come and appear to me as I was preparing to run away, perhaps they would say, "Socrates, wonder not at our words, but answer us; you yourself are accustomed to ask questions and to answer them. What complaint have you against us and the city, that you are trying to destroy us? Are we not, first, your parents? Through us your father took your mother and begat you. Tell us, have you

Civic duty  
as con-  
ceived by  
a Greek.

<sup>1</sup> Thucydides ii. 43, translation from Zimmern, *The Greek Commonwealth*, p. 202.

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any fault to find with those of us that are the laws of marriage?" "I have none," I should reply. "Or have you any fault to find with those of us that regulate the nurture and education of the child, which you, like others, received? Did not we do well in bidding your father educate you in music and gymnastic?" "You did," I should say. "Well then since you were brought into the world and nurtured and educated by us, how, in the first place, can you deny that you are our child and our slave, as your fathers were before you? And if this be so, do you think that your rights are on a level with ours? Do you think that you have a right to retaliate upon us if we should try to do anything to you? You had not the same rights that your father had, or that your master would have had, if you had been a slave. You had no right to retaliate upon them if they ill-treated you, or to answer them if they reviled you, or to strike them back if they struck you, or to repay them evil with evil in any way. And do you think that you may retaliate on your country and its laws? If we try to destroy you, because we think it right, will you in return do all that you can to destroy us, the laws, and your country, and say that in so doing you are doing right, you, the man, who in truth thinks so much of virtue? Or are you too wise to see that your country is worthier, and more august, and more sacred, and holier, and held in higher honour both by the Gods and by all men of understanding, than your father and your mother and all your other ancestors; and that it is your bounden duty to reverence it, and to submit to it, and to approach it more humbly than you would approach your father, when it is angry with you; and either do whatever it bids you to do or to persuade it to excuse you; and to obey in silence if it orders you to endure stripes or

imprisonment, or if it sends you to battle to be wounded or to die? That is what is your duty. You must not give way, nor retreat, nor desert your post. In war, and in the court of justice, and everywhere, you must do whatever your city and your country bids you do, or you must convince them that their commands are unjust. But it is against the law of God to use violence to your father or to your mother; and much more so is it against the law of God to use violence to your country." What answer shall we make Crito? Shall we say that the laws speak truly or no?'<sup>1</sup> Here is presented the duty of the citizen as conceived by the greatest interpreter of Greek ideas. For him the authority of government still rests on Man's duty to God. But Man's duty to God is inseparably connected with his duty to his fellow men. To them he is bound by an obligation to which he can recognize no limits, an obligation which requires him to sacrifice everything—property, and, if necessary, life itself—in the interests of the commonwealth. It is in the general good of the community that his own particular good is to be sought. His relation to society is that of a limb to the body; for the health of a limb must not be sought for itself, but only as a product of the health of the body as a whole. To neglect the public interest in the pursuit of his own is to grasp at a shadow and to ignore the substance. It is the principle exactly expressed in the divine paradox, 'Whosoever shall seek to save his own life shall lose it; and whosoever shall lose his life shall preserve it.'<sup>2</sup>

We now begin to see what a Greek commonwealth was and where it differs from an Asiatic theocracy. It is a body of men animated by a sense of mutual enthusiasm—of duty to each other—so strong as to

<sup>1</sup> *Crito*, 50, translation from Church, *Trial and Death of Socrates*, pp. 98-96.

<sup>2</sup> St. Luke xvii. 33.

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The rule of law capable of being moulded in accordance with experience the distinguishing mark of the commonwealth.

enable them to subordinate their own interests to that of their fellow-citizens, and to render an absolute obedience to public opinion expressed, for the purpose of such obedience, in the laws. The rule of law as contrasted with the rule of an individual is the distinguishing mark of the commonwealth. In despotisms government rests on the authority of the ruler or of the invisible and uncontrollable power behind him. In a commonwealth rulers derive their authority from the law, and the law from a public opinion which is competent to change it. In the Greek commonwealth public opinion found expression in the resolutions passed by the citizens themselves meeting in the market-place, round which the community had grown up. It was they and they alone who were competent to modify the law in accordance with the experience they had gained or their needs as they judged them from day to day. Here is a form of society essentially capable of adapting its framework to changing conditions. It is a progressive society, one in which men can adapt themselves to conditions as they find them, and so dominate circumstance instead of being controlled by it.

Effect of the Greek commonwealth on European history.

This new principle was one which profoundly affected the structure of Greek and, indeed, that of European society, and differentiated it from that of Asia. Eastern prophets had apprehended that man's duty towards God implied men's duty towards each other. But the Greeks had used the principle as the basis of practical government. They had made the common things of this material world amenable to its rule. They had brought it from the realm of abstractions, and had made it incarnate in the facts of their life. 'As the literature of Greece is the groundwork of all later literature, as the art of Greece is the groundwork of all later art, so in the great Democracy of Athens we recognize the parent state of law and justice and

freedom, the wonder and the example of every later age. . . . Never could we have been as we are, if those ancient commonwealths had not gone before us. While human nature remains what it has been for two thousand years, so long will the eternal lessons of the great "Possession for all Time," the lessons which Perikles has written with his life and Thucydides with his pen, the lessons expanded by the more enlarged experience of Aristotle and Polybios, the lessons which breathe a higher note of warning still as Demosthenes lives the champion of freedom and dies its martyr—so long will lessons such as these never cease to speak with the same truth and the same freshness even to countless generations. The continent which gave birth to Kleisthenes and Caius Licinius and Simon of Montfort may indeed be doomed to be trampled under foot by an Empire based on Universal Suffrage; but no pseudo-democratic despot, no Caesar or Dionysios ruling by the national will of half a million of bayonets will ever quite bring back Europe to the state of a land of Pharaohs and Nabuchodonosors, until the History of Thucydides, the Politics of Aristotle, and the Orations of Demosthenes, are wholly forgotten among men.<sup>1</sup>

The Greeks were indeed the first to realize the principle of the free commonwealth, but in a form too slight and delicate to survive. It was a great thing to have discovered that the public opinion of a community can be so focused as to become the directing as well as the driving principle of its government. But it never occurred to them that this could be done otherwise than by the citizens themselves meeting in the market-place to legislate, and it was impossible, so they believed, for a state to

Failure of the Greeks to realize the principle of the commonwealth except in miniature states.

<sup>1</sup> Freeman, *History of Federal Government in Greece and Italy*, pp. 67-68. The author was writing when Louis Napoleon had established the Second Empire on the basis of universal suffrage.

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include more citizens than might listen to the voice of a single orator.<sup>1</sup> The enthusiasm which inspired them at one time for Hellas—as the whole Greek people were called—might have made them one Hellenic commonwealth if they had understood how the public opinion of a people, too numerous and scattered to meet in one place, can be collected, formulated, and made to shape the law. An autocracy may include as many subjects as the edicts of the central government can reach, and up to this limit it tends to absorb all smaller and weaker states on its frontiers; with a commonwealth it is otherwise. To frame an edict at all the state must first know how to collect the wishes and experiences of a number of citizens, to distil from them that essence which may be described as public opinion and then to crystallize it into the form of a written resolution or law. The extent to which this complicated operation can be effected will determine how far the principle of the commonwealth can be realized in practice. The smaller the community the easier the process. The natural tendency of the principle is to small communities. It is exceedingly difficult to combine two commonwealths into one. But it is a mistake to assume that because a tendency is natural it is also sound; for, left to run riot, this tendency would destroy the commonwealth itself by rendering the whole society to which it is applied as unstable as it would be if organized on the tribal principle.

The multiplication of small states resulted in internecine warfare.

Hellenic society was highly unstable. The nation, in direct contrast to those of Asia, was divided into a multitude of sovereign states, and the result was anarchy. 'When each town is perfectly independent and sovereign, acknowledging no superior upon earth, multitudes of disputes, which in a great

<sup>1</sup> Aristotle, *Politics*, iv. (vii.) 4.

monarchy or a Federal republic may be decided by peaceful tribunals, can be settled by nothing but an appeal to the sword. The thousand causes which involve large neighbouring states in warfare all exist, and all are endowed with tenfold force, in the case of independent city-commonwealths. Border disputes, commercial jealousies, wrongs done to individual citizens, the mere vague dislike which turns a neighbour into a natural enemy, all exist, and that in a form condensed and intensified by the very minuteness of the scene on which they have to act. A rival nation is, to all but the inhabitants of a narrow strip of frontier, a mere matter of hearsay ; but a rival whose dwelling-place is within sight of the city gates quickly grows into an enemy who can be seen and felt. The highest point which human hatred can reach has commonly been found in the local antipathies between neighbouring cities. . . . A system of Free Cities, therefore, involves a state of warfare, and that of warfare carried on with all the bitterness of almost personal hostility. The more fervid the patriotism, the more intense the national life and vigour, the more constant and the more unrelenting will be the conflicts in which a city-commonwealth is sure to find itself engaged with its neighbours.’<sup>1</sup> As the Greek city-state was the prototype of the modern nation, so Hellas was the prototype of Europe ; but with international enmities multiplied and aggravated to an intense degree. The Greek states were the dangerous enemies of each other.

They were threatened, however, with an even greater danger from outside Hellas. Great autocracies, as we have said, naturally tend to absorb small states as soon as they touch them. But to the

<sup>1</sup> Freeman, *History of Federal Government in Greece and Italy*, pp. 42-43.

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Conflict of  
Greece  
with Persia  
the product  
of the  
inherent  
conflict  
between  
their  
respective  
political  
concep-  
tions.

Persia  
crushed  
the  
Eastern  
common-  
wealths  
of Hellas  
and con-  
verted  
them into  
despotisms.

Oriental theocracy the Greek commonwealth was in its essential idea an offence. One commonwealth may enslave another, but in doing so, the less commonwealth it. But a theocracy enslaves more men by virtue of the principle upon which it is based. A despot who regards himself as at once the oracle and vicegerent of his God, and is so regarded by his subjects, is but executing more perfectly his mission in compelling more subjects to submit to his delegated authority. The Oriental conception of government was incompatible with the principle of the Greek state. The two systems were bound to come into conflict as soon as they came into touch.<sup>1</sup>

The first volume of European history was written by Herodotus to record and interpret this conflict. To him it was definitely a conflict between Greek and 'Barbarian'—a phase of 'that Eternal Question which needs no reopening because no diplomacy has ever closed it, the question between light and darkness, between West and East';<sup>2</sup> and he traces its origin right back to the legendary days of the Trojan War and before it. But the climax came when Cyrus, prince of the warlike hill-state of Persia, conquered the Medes, who shared with Babylon the old Empire of Assyria, pushed on into Asia Minor and crushed Croesus, the king of Lydia, who had exercised a suzerainty over the Greek towns of the Aegean seaboard, and acted as a buffer for them against the East. The East in the shape of Cyrus and his victorious Persians was for the first time actually threatening the independence of the West. While Cyrus returned to cope with Babylon, his general, Mazares, proceeded to attack the Greek seaboard towns, which, with the exception of Miletus,

<sup>1</sup> The reader should here unfold the map of Greece and Persia, Plate V., and keep it before him while reading the following pages.

<sup>2</sup> Freeman, *Greater Greece and Greater Britain*, p. 76.



whose great commercial position had enabled her to obtain special terms, had one and all refused to submit to Persian rule. Their gallant resistance was futile against the numbers of the Persians. One after another they were reduced. Their autonomy, not altogether lost under the benevolent suzerainty of Croesus, was now finally abolished; their constitutions were swept away, and tyrants set up as the vassals of Cyrus. Most of the Greek islands off the coast submitted to the conqueror, but one or two remained independent, and it was not till some thirty years later that the second in succession to Cyrus on the Persian throne, King Darius, completed the conquest of the Ionians, who formed the most important section of the coastal and island Greeks, by the capture of Samos. It is sad but not un-instructive to reflect that Samos was still, in the year 1912, the scene of the same historic struggle between Western and Oriental peoples and ideas.

The great Asiatic Empire had thus absorbed the European settlements which fringed the coast of Asia Minor: but the lust for conquest and expansion was not exhausted. Cambyses, the predecessor of Darius, had moved into Africa and annexed Egypt; and Darius now crossed the Bosphorus and invaded Europe. He marched north, crossed the Danube, and attacked the Scythian tribes of South Russia: but, owing to the difficulties of supply and the elusive tactics of the Scythian horsemen, the Great King was unable to come to grips with his enemy, and was finally compelled to retreat from European soil without achieving anything. The failure of this Scythian expedition told heavily against Persian prestige, and the Ionian Greeks, who had found the rule of their philo-Persian tyrants and the payment of tribute to Darius intolerable to their inborn feeling for freedom, took the opportunity, a few years later,

But Persia becoming entangled in Southern Russia they revolted, but were soon crushed again.

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to revolt. They appealed for aid to the Greeks of the mother-country across the Aegean. Of the two leading states, Sparta, always afraid to embark on expeditions far from home, declined to help; Athens, on the other hand, sent nearly half of her available fleet, and that despite the fact that she was in grave trouble with a strong and hostile neighbour, Aegina. The revolt was at first successful. It spread all round the coast and reached as far as Cyprus. But it was foredoomed to failure in the end, for the simple reason that no belt of sea protected the continental towns from the enormous forces which Darius could send against them; and even on the sea the Ionian fleet was not decisively superior to the Phoenician fleet in the service of Persia. Hence it only needed time for the Persian armies to mobilize, and then gradually the revolt collapsed. The final and decisive battle was fought at sea. The leading Ionian town Miletus was besieged by land; but as long as sea-power was still hers, she could prolong her desperate resistance.

The  
revolted  
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might  
have  
retained  
the con-  
trol of the  
sea but for  
their dis-  
union.

It is possible that the command of the sea might have been retained, if, as so often, the Ionian states had not shown at this critical juncture their characteristic inability to act in concert. There seems to have been some slight bond of union, but the evidence is too scanty to enable us to state its exact character. There was some body, apparently, which issued coins for the use of the rebel states as a whole and could send envoys in the name of all the Ionians. But of any joint military or naval authority we hear nothing, and the fleet which gathered for the last fight at Lade was under no single supreme commander; the contingent of each town obeyed its native admiral and no one else.

The Persians, who were no sailors, relied on the navy of Phoenicia which they had conquered and

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Defeat by the Phœnicians of the Greek fleet composed of local squadrons which had not learned combined manœuvres.

added to their Empire. As a fighting unit, a ship manned by these Phœnician vassals was by no means a match for a ship manned by free and adventurous Greeks. But the Phœnician ships, commanded by a single admiral, had been trained to manœuvre together. With the Greeks it was otherwise. Their navy reproduced the multiplicity of the commonwealths from which it was drawn. Each separate squadron had its own commander. But there was no government common to them all, and therefore no admiral in chief competent to train the different squadrons to play their part in the evolutions of a combined fleet. The Phœnician navy was like a football team of indifferent players who have been long and carefully trained together, matched against better men who will not even appoint a captain and obey his lead. One of the Greek admirals, Dionysius of Phocæa, saw the danger, and at first persuaded the whole fleet to submit to tactical training under his direction. The plan worked excellently for a while, but soon they tired of the strict discipline and the loss of independence, and threw over their allegiance to the one man who could have saved them. 'From the day on which the Ionians discarded Dionysius, their camp became a scene of disunion and mistrust. Some of them grew so reckless and unmanageable that the better portion despaired of maintaining any orderly battle.'<sup>1</sup> Worse than that, early in the fight, the strong Samian contingent, undermined beforehand by the intrigues of the former philo-Persian tyrant of their state, abandoned the cause and sailed away for home. Many other contingents followed their disgraceful example. Some, notably the ships of Dionysius, fought on heroically against odds, but a decisive victory for Persia was now inevitable. The battle broke Ionian sea power to pieces.

<sup>1</sup> Grote, *History of Greece*, p. 130.

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## I

Asiatic  
civiliza-  
tion  
imposed  
on the  
Greeks in  
consequence.

'The defeat of the Ionians at Lade was complete as well as irrevocable. . . . The capture of Miletus, in the sixth year from the commencement of the revolt, carried with it the rapid submission of the neighbouring towns in Karia; and during the next summer—the Phoenician fleet having wintered at Miletus—the Persian forces by sea and land reconquered all the Asiatic Greeks, insular as well as continental. Chios, Lesbos, and Tenedos—the towns in the Chersonese—Selymbria and Perinthus in Thrace—Prokonnesus and Artake in the Propontis—all these towns were taken or sacked by the Persian and Phoenician fleet. . . . The threats which had been held out before the battle of Lade were realized to the full. The most beautiful Greek youths and virgins were picked out, to be distributed among the Persian grandees as eunuchs or inmates of the harems. The cities, with their edifices, sacred, as well as profane, were made a prey to the flames; and in the case of the islands, Herodotus even tells us that a line of Persians was formed from shore to shore, which swept each territory from north to south, and drove the inhabitants out of it. . . . Samos was made an exception to the rest, and completely spared by the Persians, as a reward to its captains for setting the example of desertion at the battle of Lade; while Aeakes, the despot of that island, was reinstated in his Government.'<sup>1</sup> The Samians had committed that fundamental treachery known to the Greeks as Medizing, the abandonment of the ideals of Hellas for those of the Asiatic Medes. Submission to despotism was one of the natural results.

Persian  
attack on  
Athens  
and their  
defeat at  
Marathon.

But, as Herodotus says, this was only the beginning of trouble for the Greeks. Darius had reduced the Greek rebels in Asia Minor, but the insult offered him by Athens in sending them help was still un-

<sup>1</sup> Grote, *History of Greece*, pp. 130-133.

punished, and he at once began his preparations for an expedition across the Aegean. He was encouraged and assisted in this design by the old despot Hippias, who, nearly twenty years before this, had been expelled from Athens when despotism was put down and democracy established. He hoped that Darius would easily overcome the resistance of the little city-state he had once ruled, and restore him as the vassal-despot of an enslaved commonwealth. Two years after Lade, in 492 B.C., a Persian army, accompanied by a fleet, attempted to reach Greece by land, but the difficulties of the route were too great and the expedition returned after definitely establishing the suzerainty of Darius over the coasts of Thrace and Macedon. The next blow was more direct. In 490 B.C., a famous year in the long annals of the struggle between East and West, the Persian fleet crossed the Aegean and landed a Persian army on the coast of Attica at Marathon. The Athenian army, a mere fraction of the Persian force in numbers, was drawn up on the slopes, ready to oppose a march by the invaders upon Athens. After a few days of anxious waiting the battle came on. By one brilliant charge down the slope and a bout of hand-to-hand fighting in the plain the well-trained, heavy-armed Athenians broke the Persian invaders and drove them to their ships. Immediately after the battle the Athenian general marched his force back across the slopes to Athens; for the Persian fleet, warned by a signal from the friends of Hippias that the town itself was undefended, had doubled round the cape and was threatening to deliver a second blow. Finding, however, that the victorious Athenian army was already back and prepared to meet him, the Persian commander returned to Asia with his task unfulfilled.

Marathon was the most inspiring event in Athenian history, and the golden age of Athens in the fifth

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Import-  
ance of  
Marathon.

century would have been impossible without it. It not only saved the Athenian commonwealth from destruction at the hands of a restored Hippias, and all the ideals of liberty from the deadening pressure of Oriental rule; but it had also given that commonwealth and those ideals their proof and justification in the eyes of Greece.

In 481 B.C.  
the  
Persians  
invaded  
Greece in  
over-  
powering  
numbers.  
Heroic  
defence of  
Thermo-  
pylae by  
the  
Spartans.

Darius died before completing the preparations he at once put in hand for avenging Marathon. They were continued, however, by his successor, Xerxes, who in 481 B.C. set in motion a far huger force, which for its very size was obliged to try again the route of the Thracian coast. Stirred to action by a peril which now visibly threatened all Hellas, Sparta at length assumed her traditional position as military leader of the Greek states and garrisoned the narrow-defile of Thermopylae, through which the invading armies must pass before they could penetrate further south than Thessaly, which, since its aristocratic rulers were pro-Persian and it had no easily defensible frontier, had perforce submitted. Through the treachery of a Medizing Greek the position was turned; but rather than quit his post Leonidas the Spartan king preferred to perish with his three hundred men. They were buried where they fell in the narrow pass, on whose rocky wall were engraved the words—

Go tell Sparta thou that passeth by,  
That here obedient to her laws we lie—

an epitaph which shows where obedience in a commonwealth is due, and how glorious the obligation of rendering it without reserve. Such acts bear witness to the only principle by which men can be bound immutably to men, the principle which denies any limit to the obligation due from the citizen to the state. It is the one relation between

them that no shifting of interests can affect—an uncovenanted bond based upon an uncalculating motive. There is no bargain to break between men bound by absolute dedication, and so bound they constitute a state, the one form of society which can be rendered stable, the noblest that man will ever achieve for himself.

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The road to Athens was now open, and Xerxes marched upon it, his fleet accompanying him round the coast. The reason for this is obvious. His army was large enough to sweep Greece from shore to shore, as the Persians had swept the Islands. But it was far too large to support itself on so poor a country, and for provisions depended absolutely upon the command of the sea. The Delphic oracle had advised the Athenians to 'trust to their wooden walls,' and it was to their ships that they retired when the Persian occupied their city. There, in the sheet of water enclosed by the coast of Attica and the island of Salamis, where the women and children of Athens had taken refuge, the nascent civilization of Europe turned to bay. 'The combined fleet which had now got together consisted of 366 ships. Of these no less than 200 were Athenian, twenty among which, however, were lent to the Chalkidians and manned by them. Forty Corinthian ships, thirty Aeginetan, twenty Megarian, sixteen Lacedaemonian, fifteen Sikyonian, ten Epidaurian, seven from Ambrakia and as many from Eretria, five from Troezen, three from Hermione, and the same number from Leukas; two from Keos, two from Styra, and one from Kythnos; four from Naxos, despatched as a contingent to the Persian fleet, but brought by the choice of their captains and seamen to Salamis,—all these triremes, together with a small squadron of the inferior vessels called pente-konters, made up the total.'<sup>1</sup>

Why the  
Persian  
army  
depended  
upon sea  
power.

<sup>1</sup> Grote, *History of Greece*, p. 206.

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## I

Defeat of  
the  
Persians  
at Salamis.  
Constancy  
of the  
Athenians.

Themistocles the Athenian admiral saw that the salvation of Hellas lay in using her ships not as walls but as weapons. A majority of the allies were in favour of falling back to protect the Peloponnesus, where they would have been inevitably overwhelmed in the open sea by the superior numbers of the Asiatic Armada. By a trick Themistocles precipitated a battle in the narrow waters of Salamis. A disastrous defeat was inflicted on the Persian fleet. Its immediate effect was to cut off the sea-borne food supplies by which alone the vast army of Xerxes could be supported in Greece. The greater part of it was compelled to retreat forthwith, with Xerxes at the head of it, leaving Mardonius with an army no larger than could be supported on the corn supplies of Boeotia and Thessaly, but inadequate for a real conquest of Greece. By him, Alexander, King of Macedon, was sent to seduce the Athenians in their ruined city and devastated country by offers of material reparation. Their answer was such as to close for ever the hope that they would betray the cause of Hellas to the Persians. 'Cast not in our teeth that the power of the Persian is many times greater than ours : we, too, know *that* as well as thou : but we nevertheless love freedom well enough to resist him in the best manner we can. Attempt not the vain task of talking us over into alliance with him. Tell Mardonius that as long as the sun shall continue in his present path we will never contract alliance with Xerxes : we will encounter him in our own defence, putting our trust in the aid of those Gods and heroes to whom he has shown no reverence, and whose houses and statues he has burnt. Come thou not to us again with similar propositions, nor persuade us, even in the spirit of goodwill, into unholy proceedings : thou art the guest and friend of Athens, and we would not that thou shouldst suffer injury at our hands.'

<sup>1</sup>

<sup>1</sup> Grote, *History of Greece*, p. 222.



On receiving this message Mardonius—who had now been joined by all his Greek auxiliaries and by fresh troops from Thrace and Macedon—marched on Athens which appealed to Sparta for help in vain. Once more the Peloponnesian states, entrenched behind the Isthmus of Corinth, were thinking of themselves alone, and failed to respond to the unshaken fidelity shown by the Athenians in the cause of Hellas. They allowed Mardonius to reoccupy Athens in May or June 479 B.C. ; her indignant people again retreating behind their ships to Salamis.

But Sparta was now frightened by fear of treachery on the part of her own allies, for Mardonius was intriguing with Argos to block the Isthmus against the exit of Spartan forces. The Spartans anticipated their possible intentions, and Mardonius, apprised of their movement by the Argives, evacuated Attica and retired to Boeotia. There Pausanias the Spartan king followed at the head of the combined forces of Greece, and inflicted upon him a signal defeat at Plataea. Mardonius himself fell in the act of attempting to rally his broken ranks. The reputation of Sparta was thus retrieved. On the same day forces landed at Mycale on the coast of Asia Minor and inflicted a crushing defeat on the Persian armies, and in this battle the first honours were accorded to the Athenians.

The Persian wars had revealed the strength and weakness of Greece. 'The struggle had brought into strong relief the contrast between absolute monarchy and constitutional freedom. This appeared in two things: the Greek strategy was superior; and the Greek troops fought better. Athens, in particular, had shown how both the intelligence and the spirit of citizens are raised by equal laws. The mistakes of the invaders—which, to a Greek mind, might well have seemed the work of Ate—were such as are

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The  
Persians  
enabled by  
disunion  
of the  
Greek  
states once  
more to  
occupy  
Athens.

Mardonius  
defeated  
and slain  
at Plataea,  
and Per-  
sian forces  
defeated in  
Asia Minor.

The energy  
and in-  
telligence  
which had  
saved  
Hellas was  
the pro-  
duct of her  
free insti-  
tutions.

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I

But these  
qualities  
had been  
almost  
neutral-  
ized by  
internal  
disorgan-  
ization.

natural when a vast force is directed by the intemperance of a single will.'<sup>1</sup>

But Greek patriotism, which was the fruit of freedom, had been almost neutralized by the absence of an equivalent organization. Hellas was broken into a multitude of parts each of which might jeopardize the safety of the whole. The nobles of Thessaly had shown that they were eager to establish the supremacy of their order with the help of Asiatic despotism. To them their own power in Thessaly counted more than the ideals of all Hellas. Through hatred of their neighbours Argos and Thebes had betrayed the common cause. Even Sparta and her Peloponnesian allies had been disposed to confine themselves to the defence of their own peninsula, leaving Athens and the Northern states to their fate, scarcely perceiving that in that fate their own would be involved.

United  
control of  
land and  
sea forces  
was needed  
to preserve  
her free-  
dom.

The war had proved that the safety of Hellas depended on the co-operation of land and sea forces. To maintain the control of the sea was the primary condition of her freedom, though victories must also be won by land before her soil could be freed from the invader. Thus Salamis was more decisive than Plataea, but neither could have availed alone to rid Greece of the Persians. Nor was either of them the work of a single state. Athens had snatched her victory at Marathon single-handed; but, glorious as it was, the forces engaged were very small compared with those required to defeat Xerxes. Athens, single-handed, was as powerless to win Salamis as to defend Attica from invasion. Sparta, in the same way, could not alone have won Plataea, nor would the victory have availed her if Persian ships had been free meanwhile to land a force in Laconia to overrun her native valley. The war, in fact, had shown that

<sup>1</sup> Professor R. C. Jebb, Article on 'Greece,' *Ency. Brit.* vol. xi. p. 100.

no Greek state was strong enough to stand alone against the jealousy of an Oriental power. Some larger combination was essential if Hellenic civilization was to survive a second attack.

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‘In the heat of the conflict, when the barriers of city patriotism were broken down and Greeks found themselves fighting, to their astonishment, not against but with their neighbours, they had dreamed for a moment of making Greece a single state. “Surely,” they argued round their camp-fires, “she has all the makings of a nation. What is there between you and me? We have the same blood in our veins, from Zeus and Father Hellen. We speak the same language, else we could not be chatting, albeit with difficulty, round this fire. We worship the same Gods, as we remember when we go to Delphi or Olympia; and we have much the same habits and understand one another’s ways. When we have finished with these barbarians let us form a common state.”

During the war the common feeling it generated seemed strong enough to unite an Hellenic commonwealth.

‘But these dreams soon faded; for what centuries have put asunder two summers’ fighting cannot bind fast. There was quarrelling even during the fighting, though men made light of it at the time; but when the campaigns were over and the time for reorganization arrived, all the old differences revealed themselves, and the “Panhellenic confederacy” disappeared into the limbo of forgotten things.

Former jealousies revived with peace.

‘Yet things in Greece could never again be what they had been before the trial came. The Greeks had learnt that, though love of country may make men brave, it is only organization that can make them strong. Moreover, for the liberated cities of Asia Minor, still technically part of the Persian Empire, and liable to be dunned any day by a satrap for tribute, some concerted system of defence was urgently necessary. Sparta had neither the men nor the money to meet this need. So she retired from a

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But the vital necessity for some larger combination induced the Ionian cities to attempt to form a joint state on the basis of alliance or contract. How this contract was brought about.

Its object, freedom from Asiatic domination, required ships and money.

position where, after all, her famous land forces would have been of very little good to her, and left the field open for the newly made sailors of Athens. Within half a decade, almost before slow Spartan wits had time to grasp what was going on, "the alliance of the Athenians" had been provisionally organized, and *the first great civilized attempt to form a state of many cities* was an accomplished fact.

'Like other great things the Athenian Empire was the child of necessity, and its creators did not know what they were doing. It had its origin in an alliance drawn up between the Athenians and the Ionians in the familiar traditional terms. "In the third year after the sea-fight at Salamis, when Timosthenes was chief Governor, Aristides (commander of the Athenian forces) swore an oath to the Ionians to have the same friends and enemies as they, to seal which they cast lumps of lead into the sea." How innocent it all sounds! But let us see what it implies, and think out the logic of the situation.

'What was the object of the alliance? Not merely to be ready to repel the Persians if they renewed the attack. This was too tame a mood for the men who had just sent them flying at Salamis and Mycale. Its watchword was not Defence but Freedom. They wished to push the war into the enemy's country, to revenge and indemnify themselves by plundering for the losses they had sustained, and (to use a phrase familiar to the Athenian leader-writers of to-day) to complete the liberation of their enslaved brothers. They were ready and eager to be led to the attack.

'But campaigning costs money; for soldiers cannot live on plunder alone, certainly not when they are engaged in "liberating." And if half the

allies are islanders and warfare is to be waged by sea, ships will be needed too. How were these two immediate needs to be met? CHAP.  
I

‘Few of the members of the new alliance had any ships to offer. Many of them had lost their navies twice over in the last twenty years, first in the ill-starred “Ionian Revolt,” and then again, after they had been forced to beat up contingents against their own kinsmen, at Salamis and Mycale. It was not easy for them to build new ones, for, unlike the Phoenicians, they had not the forests of Lebanon just behind them. Moreover, such ships as they had were not of much use, for the Athenians had been introducing improvements in the armament and construction of triremes with which they had not kept pace. So, with the exception of the big islands, Samos, Lesbos, and Chios, which had a naval tradition to maintain, the allies gave up the idea of supplying ships, and were driven back on to a substitute for their share in the enterprise.

But the allies did not want either to build ships or to man them.

‘Nor were they very anxious to give their personal service on the other allies’ ships, nor, if the truth must be told, to serve by their side in the field. They had never beaten the Persians in fair fight, like the Greeks across the water. Artemisium and Mycale to them called up very different memories: and at Lade, which might have been their Salamis, there was no Themistocles to overcome their jealousies and want of discipline. So the Athenians were not over-urgent in pressing them to take the field. They preferred comrades more accustomed to the hardship and discipline of naval service.

‘There was one natural way of settling these difficulties. The smaller allies were to pay the piper, while Athens and the large islands could call the tune. This was the plan which was adopted, on the

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So they  
contracted  
with the  
Athenians  
to pay  
them for  
building  
and man-  
ning the  
ships.

suggestion of Aristides, to settle the immediate needs of the first campaign. As the island of Delos had been fixed as the rendezvous of the allied forces the Delian temple of Apollo formed a convenient bank, and the first contributions were paid in there. The scheme pleased both parties, and it was determined to regularize it. Aristides "the upright" was entrusted with the task of fixing a scale of contributions. "It was a long business, necessitating much travelling" and (unless the Greeks have utterly changed their nature) even more tact than uprightness; also "in the absence of precedents, many difficult inquiries, for only the cities which had formed part of the Persian Empire for some considerable time had a census of wealth which he could use." But by 470 the work was done. The total sum needed annually for the operations of the Alliance had been fixed at 460 talents. Aristides divided this out on a proportional scale amongst the two hundred or so allies, and the scale was faithfully adhered to, as the charter of membership, until Cleon turned financier in 425.

'Thus the allies had, without knowing it, slipped into financial centralization and established the first Greek Imperial Exchequer. Moreover, it was centralization of a peculiarly insidious kind, for the predominant partners, and especially Athens, who did most of the work and bore the chief responsibility, did not contribute a penny to the costs.

'Who controlled the spending of the money? Officially, of course, the allies themselves. *For this purpose they elected representatives to a Parliament at Delos, which, like the Ecclesia or any other city assembly, was to discuss and decide upon all matters of policy. But in practice little importance attached to its deliberations, for its executive officers, the Athenian generals, were themselves responsible to*

*their own Sovereign people: so if the two sovereigns decided differently, a deadlock would ensue.* The Imperial Parliament, therefore, could do little more than ratify, or, if it wished to be zealous, anticipate, the decisions of the Athenians. Moreover, the money itself was put into the hands of the Athenian officials. Clearly it could not be husbanded by all the allies together. One treasurer would be suspect, but a commission of ten was more than enough. They bore an Imperial title, "Stewards of the Greeks," but they were Athenians by nationality and elected by the Athenian people.<sup>1</sup>

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I

The League was thus controlled by Athenian officers who took their orders from the government of Athens, not from that of the League.

Had the Ionians really succeeded in this '*attempt to form a state of many cities*'? The state, as was noticed in the Introduction, differs from any other form of human organization in that the authority which it claims over the conduct of its members is unlimited. It assumes the right to deprive them, in the interests of the community, of their property, of their liberty, and of their lives; and it is only while that claim is admitted to a sufficient extent by a sufficient number of its members that the state can exist. Government can only *continue* so long as it can depend upon the willingness of a sufficient number of its subjects to sacrifice their lives in order to secure obedience to the law. Nay more, the state can only *thrive* in so far as it can depend upon the subordination by the citizen of his private interests to those of the public in the ordinary things of daily life. Amongst the people of Athens at its prime this spirit of devotion was as widely realized as in any state that has ever existed. A state in which all the citizens were actuated by the patriotism of a Socrates would be completely organic, and the use of force to constrain the obedience of its citizens would

The state is an organization which claims the absolute and undivided allegiance of its members.

<sup>1</sup> Zimmern, *The Greek Commonwealth*, pp. 179-183. The italics are not the author's.

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## I

And it was to their several states, not to the League, that the Greek citizen was prepared to render such allegiance.

be unnecessary, because their devotion would be as absolute as the claim which the state made upon it.

But this claim to unlimited devotion which a state makes—a commonwealth no less than a despotism—carries with it one consequence which it is impossible to evade.<sup>1</sup> It precludes the rendering of such devotion to any other state. No man can serve two masters. Cyrus could not admit that any one of his subjects could render to another authority, whether satrap or tribal chief, the unquestioning allegiance he claimed as due to himself. Nor more could the commonwealth of Athens admit it. Such devotion as it claimed, and as Socrates realized to perfection, could not be rendered by its citizens to any other human authority. No man can be the subject of two states, and the man who feels the immeasurable obligation which his citizenship lays upon him and sets out to fulfil it had best be clear in his mind first of all where that obligation is due. No Athenian would have doubted that that obligation, so far as he was concerned, was due to the laws of Athens. But what was true of Athens was true no less of Samos, Chios, Lesbos, and the hundreds of other communities which joined in '*this first great civilized attempt to form a state of many cities.*' Each and all of them would have claimed the absolute devotion of their citizens, and to each and all of them those citizens would have confessed their ultimate allegiance to be due. In the last analysis it was to Athens, Samos, Chios, and Lesbos that the individual citizen felt himself to be dedicate, from the cradle to the grave.

<sup>1</sup> There may be cases in which the citizen is called upon to resist the government and even the law in the interests of the state itself, but how or when they arise is a question irrelevant to the point at issue. Normally, the duty of the citizen to obey his state is clear, and it is therefore of crucial importance that he should know what his state is. He cannot evade this question by discussing whether a particular law is so immoral that he ought to resist it.



It was for his city-state that he could make the final submission and the supreme sacrifice—not Hellas.

CHAP.

I

But the Persian wars had forced him to realize the unpalatable fact that his beloved city-state was too small to maintain its separate existence. Even the largest of them—Athens—was forced to recognize that it could not live in isolation, and that all the Ionic states which bordered on the Aegean had a common danger and a common interest in uniting to avert it. What was more natural than to think that with such identity of interest the whole difficulty could be met by these states contracting with each other for their mutual protection? To the general defence each city was to contribute according to its means and also in the manner which best suited its convenience. Actual experience of war had taught them the folly of separate armaments. There was to be one army, one navy, and a common chest. It followed, therefore, that there must also be one body to command these forces, and also to control the foreign policy of the League. *‘For this purpose,’ says Zimmern, ‘they elected representatives to a Parliament at Delos, which, like the Ecclesia or any other city assembly, was to discuss and decide upon all matters of policy.’*

They sought, therefore, to secure by contract between sovereign states the protection which each severally was too weak to maintain for itself.

Amongst the allied states politicians were doubtless found to talk as though this Delian synod were the federal counterpart of the ecclesia which governed a Greek democracy. But before we accept their opinion we must examine it somewhat more closely. Let us therefore consider the position of a delegate at Delos bound, as he certainly must often have been bound, by instruction from the state that sent him there. What was his position when a majority on the synod resolved on a course contrary to his instructions? Where in this case was his obedience due,—to his state or to the League? And, should his state withhold the tribute

But the citizen was disposed to obey the government of his state when it differed from the synod of the League, which had no means of its own for enforcing its authority.

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they were pledged to pay until their wishes had been met, was the League justified in enforcing that payment? Or, when the fleets of the League were called out to enforce payment on a recalcitrant state, what was the duty of an individual citizen in that state, the captain perhaps of a ship belonging to it? Was it his duty to aid the League in exacting the promised payment, or to obey the call of the state government to resist the exaction? The truth is that the Delian synod was neither an ecclesia nor a parliament of representatives, but a congress of delegates like that which the thirteen American states established in 1781, and which collapsed because the delegates felt themselves bound, not by the vote of the majority, but by the instructions of the state which had sent them. It differed not in degree but in kind from the ecclesia, of a Greek democracy, from the congress<sup>1</sup> of representatives established in Washington in 1789, and from the parliament of a British Dominion. It is either in the Diet of the Holy Roman Empire, in the Congress of 1781, or in the Imperial Conference that its true counterpart must be sought. If '*little importance attached to its deliberations*' it was because, like the proceedings of these other bodies, they could settle nothing and effect nothing in practice.

Athens undertook to enforce the authority of the League on the states, and by abusing her power alienated their devotion.

But the danger from Persia was still imminent, and the need for united action too obvious for dispute. It must therefore have been with the general approval of the allies that Athens, which had undertaken to build and man the ships, should likewise undertake to direct policy and to collect by

<sup>1</sup> See footnote to page 133 of Freeman's *Greater Greece and Greater Britain*. 'The use of the word *Congress* for the Federal Assembly of the United States, is a curious instance of the survival of a word when a thing expressed by it has wholly changed its nature. Up to 1789 the United States had a body which had naturally borrowed the name of *Congress* from the diplomatic gatherings from which it had much in common. In 1789 this mere Congress gave way to a real Federal Parliament. But the Federal Parliament kept the name of the imperfect institution which it supplanted.'

force the contributions due from defaulting states. Doubtless they assumed, as did the Americans on the morrow of their victory over England, that each state could be trusted spontaneously and continuously to fulfil the terms of the compact. But, as all experience shows, it is in practice impossible to rely on a number of parties (the Delian League included at its fullest well over 200) spontaneously to fulfil the terms of a bargain. The failure of any one of them was an injustice to the rest, provoking and excusing a similar failure on the part of others. But the failure of a number jeopardized the safety of the whole, and if the League was really to secure its members against Persia, recusant states had to be compelled to furnish the contributions they were pledged to pay.

To begin with, and so long as the danger from Persia continued, the Athenians were only enforcing justice to the majority when they exercised the executive powers entrusted to them to exact from the minority the fulfilment of their obligations. The allies who took no part in the active administration of their external affairs ceased to understand them, or to realize the dangers by which they were threatened and the necessity for the continued existence of the League. Lack of direct responsibility must have infallibly undermined their loyalty to the League and have made them less ready to contribute their quota, except under the pressure of a constraining executive. On the other hand, the executive power of the Athenians inevitably grew with its exercise until, when the danger from Persia seemed to have abated, Athens was in a position to dominate the League. Not only did the synod cease to exist, but the Imperial treasury was transferred to Athens. The allies ceased to be partners and became subjects. To Athenian officers

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Athens and not the Confederacy was the state to which their ultimate loyalty was due, and when the Athenian Democracy required the money of their allies to be spent on themselves, their officers, the so-called 'stewards of the Greeks,' acquiesced, and so spent it. Amongst the allies there was a growing sense of injustice. Their devotion to the League, instead of being fostered, was alienated. It had, in fact, ceased to be a league without becoming a state. It had become an Empire in which one state dominated the rest for its own aggrandizement.

The experiment proved that a state cannot be based on a balance of interests between separate communities, but must rest on the direct loyalty of individuals.

Such were the results of the first, but by no means the last attempt to found a stable society on the principle of contract,—on a balance of interests between separate states, and to dispense with the only bond by which a society can be rendered stable; one which binds the individual man to the whole society by a tie stronger than that which unites him to any separate part of it,—by the strongest tie by which men can be bound at all—that of absolute and final dedication. It is the only human relation which cannot shift; for interests, however well balanced they may seem to begin with, invariably shift, and when they do so the whole structure, which depends on the maintenance of their balance, is thrown awry. In the League of Delos the interests shifted the moment the allies felt that their independence was more nearly threatened by the power of Athens than by that of Persia. But by that time Athens had grown used to the luxury of spending the contributions of the allies, and had also established her power to enforce them. Thenceforward the interests of the League diverged from those of the subordinate states, and all their citizens were placed in a false position by the conflicting claims made on their loyalty. And so it must ever

be with every device which confuses the direct relation of the citizen to his state, and puts him in doubt as to what his state is and where his allegiance is due. As Freeman has weightily declared, 'the *Staatenbund* has never yet really worked well under any circumstances';<sup>1</sup> and in practice such devices have invariably yielded some monstrous results. The chapter of Greek history which Herodotus wrote tells how Hellas was saved from Persian despotism by her most brilliant commonwealth. In the next chapter Thucydides tells us how Sparta, Corinth, and other Hellenic states combined to attack that very commonwealth, because, so they claimed, her despotism was no less intolerable than that of Persia.

The paradox of the position was that it was precisely during these years that Athens was creating the ideal city-state patriotism described above, and planting in her citizens a devotion to the commonwealth transcending and inspiring all the other emotions of their lives. But, just at the same time as she was thus perfecting the idea of a commonwealth limited in scope to the city-state, she was failing to grasp the idea of a wider Imperial Commonwealth. It was a tragic paradox. The combined attack was successful. After a war of twenty-seven years' duration (431-404), Athens in the end was beaten, her fleet destroyed, and the 'subjects of Athens' set free.

Athens, unable to depend upon the loyalty of her allies, was conquered by Sparta aided by Persian gold.

Had she only succeeded in unifying the organization and the sentiment of the Delian League there can be little doubt that the League would have maintained its control of the sea and defeated Sparta. As it was, she could extort more 'tribute' from her 'subjects' and build more ships with it, but she could not force those subjects to man those ships and

<sup>1</sup> Freeman, *Greater Greece and Greater Britain*, p. 135.

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fight side by side with her own citizens in defence of a common state and a common ideal. Indeed, she could not trust them if trained to arms not to bear them against herself. The time came when she had barely enough crews to keep a strong fleet at sea, and when the enemy faced her on her own element she was crushed at last and her sea-power broken. And the loss of the command of the sea spelt ruin. Like modern England she depended for the bulk of her food on supplies from oversea, and not long after the last sea-fight she was starved into surrender.

Thereafter  
Greek  
disunion  
enabled  
Persia once  
more to  
dominate  
Hellas.

With the fall of Athens the great age of Greece came to its close, and the sequel is a story of decline. The voluntary union of the Greek world had ceased to be possible. In the fourth century the divisions between the Greek states grew deeper than ever. There was constant war, and each state avowedly fought for its own hand. The renewal of the Persian advance no longer evoked a common sentiment of hostility and a common determination to resist it. It was Persian gold that enabled Sparta to maintain the fleet which had beaten Athens, and presently she was guilty of an even blacker treachery to Hellenic ideals. The fall of Athens did not really free the Aegean states from external domination. Sparta professed to have made war to restore their autonomy; but they soon found that her little finger was thicker than the Athenian thigh. Spartan rule was far more despotic and even less organic than Athenian. And now it was Persia's chance at last. She began to play a double game with consummate skill and a single eye to the restoration of her despotic power over the Greek states of Asia Minor. After helping Sparta to crush Athens, she changed sides, attacked Sparta, and set Athens on her feet once more. It was the Persian fleet, commanded by the exiled Athenian admiral Conon, that won the battle of

Cnidus in 394, closed Sparta's brief tenure of sea-power, and released the island states from her control. It was the Persian fleet, with a Persian satrap on board, that appeared in the same year off the coast of Attica—actually within sight of Salamis—and enabled the Athenians by its protection to rebuild the long walls. It was Persian intrigue, moreover, which now brought about a coalition of Athens, Thebes, Argos, and Corinth, a strange medley of old friends and foes, and launched against Sparta the Corinthian War. Then, after some six years' desultory fighting, Persia, seeing that it was time to change sides once more, negotiated a peace in pursuance of which the following rescript was issued to the Greek world: 'King Artaxerxes thinks it just that the cities in Asia, and the islands of Clazomenae and Cyprus, shall belong to him. . . . If any refuse to accept this peace, I shall make war on them, along with those who are of the same purpose, both by land and sea, with both ships and money.' Persia and Sparta together were strong enough to enforce these disgraceful terms, and a great part of Hellas was abandoned once more to the despotism of Asia. Thus closed this phase of the long conflict between East and West. The tables had been turned indeed on the victors of Marathon and Salamis, Plataea and Mycale. And the miserable reversal was not due to any essential change in the relative strength of Greek and Persian. The disciplined Greek hoplite was still a match for any number of despot-ridden subjects of the Great King. A properly equipped Greek fleet could still have scattered his Phoenician ships. The cause was simply the failure of the Greeks to unite, to extend their noble ideal of local city-state patriotism into a wider and greater field, and to organize Hellenic patriotism for the task of preserving the heritage of Hellas.

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Disunion  
next  
enabled  
Macedonia  
to domin-  
ate the  
Greek  
states.

Through the one remaining chapter of Greek history that must here be told runs the same paradox of Greek politics. In the internal life of the city-state Hellenic civilization was still at its height. At Athens it was the age of Plato and Aristotle, Demosthenes and Isocrates, Praxiteles and Scopas; and the domestic policy of the restored Athenian democracy was moderate and wise. But in external politics it is still the same story of bitter rivalry and conflict. Sparta's military supremacy was at last overthrown by the newly developed power of Thebes. But Thebes produced generals, not statesmen; she made no permanent use of her advantage, and at the battle of Mantinea lost what she had gained at the battle of Leuctra. Athens recovered her old command of the sea, but made no use of it for the delivery of Hellas. And in the meantime a new power was developing in the North which was soon to overshadow the petty conflicts of the Greeks and destroy for ever the reality of their autonomy. Macedon was only a half-Hellenized country, but it had an immense advantage over the more cultivated Greeks. It was a unified national state with a single army under a single ruler; and it was not a very difficult task for Philip II., the Macedonian king, to make himself the dominant power in the Balkan Peninsula. The Greeks, who had failed to combine against Persia, were little disposed to combine against a master, himself half Greek. His victory at Chaeronea in 338 closes the career of the city-states of Hellas as independent powers.

Conquest  
of Asia  
Minor  
projected  
by Philip.

Now for the first time all Greece was united, but united in subjection. Philip summoned delegates from all the states to a congress, and at its second meeting proposed that the confederate Greek world should undertake its long-shirked national duty and, with himself at its head, attack Persia and rescue



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the Greek states of Asia Minor from the domination of the Great King. The expedition was voted, but with little enthusiasm. The Greeks still looked on Macedon as an outsider; they did not want Philip for their leader; and under any leader they did not care to renew the old struggle with Persia. How little Philip trusted in Greek union or loyalty is shown by the fact that he had to leave three strong Macedonian garrisons in Greece when at last he started for the great campaign.

His plans were interrupted by his death, but only for a moment. Alexander, one of the most brilliant soldiers in history, was even more competent than his father to carry them to an issue. In 334 he crossed the Hellespont at the head of an army, and by 326 had become master of Asia from the Aegean to the Punjab. Asia Minor was thoroughly Hellenized, and remained Greek until its civilization was wiped out by the Turks in the eleventh century. Alexander was planning the conquest of Arabia, which would almost certainly have been followed by that of Carthage and Rome, when he suddenly died at the age of thirty-two. The vast Empire which he had not lived to organize quickly fell to pieces and made way for the enduring work of Rome.

Asia conquered by Alexander as far as the Punjab.

From the standpoint of the present inquiry the conception which underlay this Empire is of the deepest interest. Alexander's idea had been, by conquering the entire known world, to correlate within the bosom of one state the civilizations of Europe and Asia. Seeking for some political idea common to both, by which to unite them, he fell back on the primitive belief of the Homeric Greeks that the authority of rulers is derived from the divinity of their origin. It is this which explains his strange visit to the Oracle of Ammon whose priests were constrained to greet him as the son, not of

His attempts to unite East and West in one state by reverting to the principle of theocracy.

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Philip, but of God. Thenceforward he exacted from his followers an acknowledgment of his divinity. His purpose, so the latest German authority believes,<sup>1</sup> was to secure some title by which he could command the obedience of the East as well as the West, and this, like the Roman Emperors, he could only do by making the West revert to the Oriental idea of theocracy. The racial fusion of East and West was also part of this policy of world-empire. Ten thousand of his Macedonians were wedded to Persian women of the same standing at Susa, and Alexander himself married the daughter of Darius. The scheme next provided for transplantations of Greeks into Asia and Asiatics into Europe; and the first part of this was carried out in the countless Greek settlements which the conqueror dotted over the East. In the third place, there was to be military service on equal terms. Greek military schools were established in each province, and in five years' time an army of 30,000 Asiatics, trained and armed in Macedonian fashion, was ready to take the field. Persians were actually incorporated by the young conqueror in the veteran ranks of his Macedonian army. It is fortunate indeed that he did not live to realize his dreams, for his Empire would have been one in which the Asiatic elements would have so outweighed the European, that Eastern conceptions and habits would probably have extinguished the nascent ideals of the West. This, in truth, was the danger from which Rome was destined to save Europe.

The  
Common-  
wealth, as  
realized by  
the Greeks,  
was too  
slight to  
survive.

It is unnecessary for our purpose to trace the history of the Greek states until they were finally incorporated in the Roman Empire and vanished. New confederations were attempted, but never on a footing wide or firm enough to enable the Hellenes to become the masters of their own fate. The

<sup>1</sup> E. Meyer, *Kleine Schriften*.

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greatest of all political ideas had been theirs, and they had been able to explain as well as to realize it—but only in miniature. The republics they produced did not contain more citizens than could listen to the voice of a single orator. As they believed, it was impossible for a larger community than this so to formulate public opinion that it could be used as the governing principle of the state. But if history had justified this belief, communities developed on the principle of the commonwealth must always have been as fissiparous as primitive tribes. No more than the tribal system could this principle have produced a stable society. Had Athens, and states no larger than she was, proved to be the only possible expression of free institutions, and Europe had been parcelled out into a multitude of tiny republics, she and her civilization would have perished, as Hellas perished, in their internecine struggles. ‘The one word city-state explains the catastrophe which overtook the whole eastern side of the antique world. The city-state is necessarily no match in war for the organized country-state. That the western side escaped this fate is due to the union of Italy under the strong leadership of Rome.’<sup>1</sup>

Like Athens, Rome was a city republic superior in energy to those around her; but those energies were concentrated in fitness for war, and were not, like those of Athens, partly diverted to culture. Like other city-states she was in perpetual conflict with neighbours, and always ended by conquering them, until she was mistress of Italy. In the Roman character there existed a certain love of order, and it was the comparatively settled conditions which followed her conquests that reconciled men to her rule.<sup>2</sup>

Rome,  
herself a  
city-state,  
mastered  
Italy.

<sup>1</sup> Seeley, *Introduction to Political Science*, p. 366.

<sup>2</sup> The reader should here unfold the map of the Roman Empire, Plate VI.

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She then  
crushed  
the  
Phoenician  
fleets and  
consoli-  
dated the  
Mediterranean  
littoral  
into one  
state  
which was  
permeated  
by Greek  
culture.

No sooner was the position of Rome in Italy secured than she found herself committed to a struggle for existence with the one Oriental people which has acted as a link between Eastern and Western ideas. The Phoenician branch of the Semitic race was beginning to outflank Europe from the south. Rome, however, became a sea-power, mastered the Mediterranean, and in 146 B.C. the destruction of Carthage left her incomparably the strongest power on its shores. All the varied races inhabiting the Mediterranean were rapidly brought beneath her rule, and thus for the first time were kneaded into one political lump. Greece was part of the lump, and rapidly leavened the whole.

Conflicts  
of Rome  
with Asia.

A process, however, which extended the Roman Empire into Asia Minor, inevitably brought it face to face with the ancient powers of the East. From the necessities of the case some frontiers had to be established between them and Rome, and no thoughtful student of history will agree with Ferrero in regarding the campaigns of Sulla, of Lucullus, of Pompey, of Caesar, of Antony and of Augustus, mainly as plundering expeditions organized for the advancement and profit of themselves and their political satellites. It was the same necessity which drove Caesar and his successors to master, so far as the means at their disposal enabled them to do so, the barbarian powers which threatened the Empire from the North.

The  
Athenian,  
Roman,  
and  
British  
Empires  
compared.

Their organizing genius had enabled the citizens of Rome to conquer vast dominions which they inclined to treat as though half the world could be handled as their municipal commonage, or rather as the estates of the ruling oligarchy. Thus in the last century before the Christian era, the city-state of Rome had achieved, by very different means and upon a scale enormously larger, a position similar to

that of Athens. But unlike Athens the communities over which she ruled were not of one race, language, religion, and civilization. In their diversity they, in fact, resembled those now included in the British Empire. It was the first attempt to correlate in one system the many and various families of mankind. Like Athens she began by treating them as possessions, and ruled them primarily in the interests of the city republic of Rome.

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Just as the Ionians had revolted from Athens so the Italians revolted from Rome. But Rome survived and had the wisdom to admit the Italians to her citizenship. In the Roman as in the Greek republics the ultimate sovereignty vested in the citizens themselves assembled in the market-place of the town. But the assembly of this multitude in the Roman forum was impossible. The republican constitution of Rome became a farce, and government rapidly passed into the hands of whatever Roman general was able to command the most powerful army. It was mainly in the great Asiatic wars that such armies were disciplined, till Caesar in Gaul, by a series of conquests over its turbulent tribes, forged a weapon by means of which he became the master of Rome.

Extension of Roman citizenship to the Italians rendered the constitution unworkable, and led to military despotism.

Caesar proceeded to extend the citizenship from Italy to races beyond its borders. He even included Gauls in the Roman Senate, which was rapidly degraded to a body for registering the Imperial decrees. His policy in effect was so to extend the Roman republic as to make it include the whole Empire. The world was no more to be exploited for the sole benefit of the inhabitants of Rome or even of Italy, as it would have been if Rome had preserved her 'liberties' on the old footing which the assassins of Caesar attempted to restore. This extension of the Roman franchise was steadily continued by

By Caesar and his successors citizenship was gradually opened to all free inhabitants of the Empire.

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Caesar's successors. By Nero's time we find that a Levantine Jew had been able to bequeath the Roman citizenship to his son Saul. Eventually it was extended to all the subjects of the Empire other than slaves. 'It was,' as Bacon said, 'not the Romans that spread upon the world; but it was the world that spread upon the Romans, and that was the sure way of greatness.'<sup>1</sup>

Autocracy  
thus  
became  
the only  
alternative  
to anarchy.

If the extension of the Roman franchise to the Italians had rendered impossible the election of officers and the ratification of laws by the citizens assembled in the Forum, much more was it so when Caesar extended it to races beyond the borders of Italy. The arbitrary restriction of citizenship to the inhabitants of Rome was contrary to the principle of the commonwealth. Its extension to all men equally fit for it, irrespective of locality, was a vindication of that principle. But it was a measure which precluded the method of direct legislation by the citizens; and that, as we have seen, was the only method understood in the ancient world by which public opinion could be so formulated as to take effect as the principle of government. 'In Italy,' says Freeman, 'a representative system would have delivered Rome from the fearful choice which she had to make between anarchy and despotism.'<sup>2</sup> But it certainly would not have saved her from the choice when she undertook to order an empire which included Spaniards, Gauls, Britons, Germans, Serbs, Greeks, Asiatics, and Africans, as well as Italians. We have only to imagine a parliament composed of the representatives of all these peoples, some of them barbarian, others half civilized, and none of them, save the Romans and Greeks, understanding the principles of respect for law and devotion to the commonwealth

<sup>1</sup> Bacon, *Essay XXIX*.

<sup>2</sup> Freeman, *History of Federal Government*, p. 52.

on which the Republic was founded, to realize its impossibility. The only plan which had the least chance of working in practice was to concentrate in the hands of those who did understand those principles all the offices of the city-state and to back them with an army strong enough to enforce the general law against all the diverse races of which the Imperial-state was compounded. The function of force, as Mahan has well observed, is to give moral ideas time to take root. The habit of order could no more be acquired by all these jarring elements than it could by the numerous races of India, until they had been constrained for a period to the practice of it. Later on, after the backward peoples had grasped the principles of the commonwealth, it might have been possible, had the representative system been invented, to have extended the responsibility for the maintenance of the Empire to an ever-widening circle of citizens until in the end it became once more a republic. The genius of Rome did not rise to the level of its opportunity. It preferred to concentrate the sovereignty on the shoulders of one man, and to clothe him with a divine authority entitling him to the unquestioning obedience of his subjects. The rule of the Caesars, however, had one merit. They employed the force embodied in the armies whose generals they were, to create an order which, because it was systematic, was capable in ages to come of being established on a basis other than despotism.

For Rome, she alone in her victories, has clasped to her bosom  
her foes,  
She has suckled mankind as her children, and the title to rule  
that she shows  
Is the right of a mother, not mistress. The far-off peoples she  
tamed,  
With fetters of love she shackled, and not subjects but citizens  
named.<sup>1</sup>

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<sup>1</sup> Claudian, *De secundo consulatu Stilichonis*, v. 150-153.

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The Roman Empire substituted the organization of the state for that of the tribal system in Europe.

So sang of Rome in the Roman tongue an Egyptian poet. Stilicho, the subject of this poem, whose prowess and fidelity had staved off the ruin of the Empire, was himself a Vandal by race.

What the Roman Empire accomplished will be better understood if we compare the condition of Europe before and after it. Throughout the period when miniature states were blossoming on the shores of Greece and Italy the rest of Europe was inhabited by people who had not emerged from a tribal state of society. They had attained no such civilization as had long existed throughout the greater part of Asia for thousands of years. In one century Rome schooled the inhabitants of Southern Europe to the conditions of a state far in advance of any that Asia had produced. And before she fell she had made statehood a social habit of the whole continent. The importance of this will be better realized when at a later stage of this inquiry we come to examine one remote corner of Europe where the sword of Rome was never felt. Ireland was never freed from the habits of tribalism by Roman rule. She retained them to fester like an organ whose uses have long been outgrown,—an abscess torturing Ireland herself and sending its poison throughout the Commonwealth.

In a word, Caesar and his successors never committed the fundamental mistake of creating a sham state.

Despotic character of the Empire revealed by its immediate reversion to theocratic principles.

Now that the citizens of Rome had grown too numerous to legislate for themselves resort was had to the theory that the Emperor held their power of attorney. Their legislative and executive authority were concentrated in him. This was the theory, but in reality the Emperor was an autocrat. And even before the despotic character of the Empire was admitted in the West, the Asiatic provinces hastened to invest Augustus with the halo of divinity. 'The



Asiatic towns were not content to adore the president of the Latin republic: they wished to advertise their devotion in every direction, as though to urge other nations to sanctify their subjugation by making their subservience a religious duty. Thus the sceptical politician of a decadent republic, the grandson of a money-lender, was adored as the equal of Zeus, of Ares, and of Hera, and this in Asia Minor.<sup>1</sup> Even in the coast districts, as this historian goes on to point out, the Greek communities were already deeply tinged with Oriental ideas. In the interior 'were none but barbarous and hardy races, made to endure the domination of men, and gods in every form, incapable of independent action, ready for slavery, for military service, for obedience to their sovereigns, their priests and their gods. The mental habits of these races excluded all possibility of political understanding or intellectual culture, and chiefly consisted in a rude and violent mysticism, stimulated by two vast religions, monotonous as the plateau which their votaries inhabited—two of those mystical and vague cosmopolitan religions which crush the minds of men beneath the weight of infinity and have contributed at every age to form mixed races and prepare them for slavery. The younger of these worships was the cult of Mithras, which the Persian power had introduced and spread over the plateau of Asia Minor. It was an austere worship, formed by a fusion of primitive Mazdeism with the Semitic doctrines of Babylon, in which Mithras was worshipped as Justice and as the Sun, the sublime and almost inaccessible source of life and virtue. It was a worship which professed to lead feeble humanity to this inaccessible source by a host of ritual ceremonies and obscure symbols. The kings were regarded as human incarnations of this principle, and the monarchy as the poor but

<sup>1</sup> Ferrero, *The Greatness and Decline of Rome*, vol. v. p. 12.

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Greek  
and Re-  
publican  
tradition  
tempered  
the  
petrifying  
influence  
of the  
Imperial  
Theocracy,  
under  
which  
patriotism  
decayed.

venerable image of the divine.'<sup>1</sup> But how easily the West yielded to theocratic ideas may be seen from the literature of the Augustan age. Virgil and Horace were content to deify Caesar and Augustus in their poems, even while Augustus, with whom they were intimately acquainted, was moving in Roman society.<sup>2</sup>

Subsequent emperors gradually dispensed with the republican disguise with which Augustus had studiously veiled the system he founded. But the Imperial despotism was accepted by a world permeated by Greek culture which yearned for the comparative repose it secured for them. And that culture, penetrating to the furthest limits of the Empire, rescued Europe from the petrefaction which despotism had brought upon Asia. Roman law never became a sacred code like the Koran, never quite lost the tradition of its republican origin or the capacity for adaptation which the principle of the commonwealth imparts. The general extension of civic rights throughout the Empire had carried with it the law which governed the relations of Roman citizens to one another. In the process of diffusion the law itself was developed and elaborated. The pacification and opening up of the communities surrounding the Mediterranean promoted commerce and industry on a scale before unknown to the world, and the legal system of Rome kept pace with its growth. That the Imperial courts were able to develop rules of law suited to the changing conditions of business instead of cramping business to fit the ancient and customary rules, as an Asiatic power would have done, was largely due to the liberating influence of the Greek ideas which vitalized the Roman world. But it was the genius of Rome which systematized

<sup>1</sup> Ferrero, *The Greatness and Decline of Rome*, vol. v. p. 16.

<sup>2</sup> See Note A at end of this chapter, p. 80.

the dictates of common sense into a code of rules, and made them generally applicable throughout the Empire. Unlike the codified customs of Asia the Roman Law never lost the power of adapting itself to the changing needs of society. It was something, too, that it retained in some of its forms the republican tradition that law is ultimately based on the will of the people.<sup>1</sup> Though the Romans spoke of their emperor as divine, the laws he made or codified were never regarded, like Eastern systems, as too sacred to change. Whatever good was done by the Roman Empire for future generations was accomplished in so far as it preserved the principle of a commonwealth. But in so far as it developed into a despotism it destroyed the spirit from which alone the state, as understood by the Greeks, can derive its vitality. In losing the character of a commonwealth it failed to cultivate the spontaneous enthusiasm of ordinary citizens. 'The real evil was a moral evil, the decay of civic virtue. . . . Unless (the Roman provincial) could enter the privileged ranks of the army or the higher civil service, he had no opportunities of studying, still less of helping to decide, the questions of policy and administration with which his welfare was closely though indirectly linked.'<sup>2</sup> He was not enlisted in the cause of government, taught by experience to exercise it, and identified with its mission. Government relied increasingly on concentrated force, and the ordinary citizen learned to regard the state as an enemy instead of a friend. It failed, in a word, to foster patriotism. As men grew to think less and less of the interests of the state they grew to think more and more of their own, and to put them first. The root of the temporal no less than of the spiritual commonwealth is within men,

<sup>1</sup> See Note B at end of this chapter, p. 82.

<sup>2</sup> Davis, *Mediaeval Europe*, pp. 18-19.

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Forces set in motion from Asia worked the destruction of the Roman Empire.

Removal of the capital to Constantinople resulted in the division of the Empire into Eastern and Western halves.

Division of the Empire followed by the schism of the Greek and Latin Churches.

and as the citizens of Rome lost the habit of subordinating their own interest to that of the state, so did the state lose its character of a commonwealth, seek to found its authority on supernatural sanctions, and to enforce that authority with the lash, the halter, and the sword.

Visible decay at the extremities revealed the disease which was silently sapping the vitality of the Roman state. No longer proof against the forces of chaos which surrounded it, a disintegration of the frontiers set in. The inroads of barbarians and Orientals ate deeper and deeper, until at length they reached the vital organs themselves and the Roman Empire perished. It collapsed beneath the pressure of attacks on its Northern and Eastern frontiers set in motion by disturbances in the distant regions of Asia.<sup>1</sup>

As the Roman power declined it became increasingly difficult to hold the Eastern frontiers of the state, and in 330 A.D. Constantine moved the seat of Government to Byzantium, which was known henceforth as Constantinople. There he erected a fortress to guard the narrow straits which divide Southern Europe from Asia Minor. The capital of the Empire was thus removed from the centre of the Latin to the centre of the Greek section of Europe.

Constantine, however, effected a change of even greater importance by abolishing paganism and adopting Christianity as the religion of the state. For the Church this official recognition involved the most serious consequences, for presently it became impossible to hold the Western or Latin half of the Empire, which split off, and was governed by separate Emperors from Rome. The division of the Empire thus led to the division of the Church between the Greek and the Latin worlds.

North of the Western Empire lay the vast shifting

<sup>1</sup> Gibbon, *Decline and Fall of the Roman Empire*, chap. xxvi.

masses of Teutonic tribes, still in the condition of barbarism from which the Greeks and Romans had emerged some thousand years before. As the Empire decayed these tribes overran Britain, Gaul and Spain, crossed the Straits of Gibraltar, and established themselves in the north of Africa. Eventually they occupied Italy itself. In 476 Odoacer, at the head of German troops who had served as Roman mercenaries, dethroned the Emperor Romulus Augustulus, and the Western Empire came to an end. Various Germanic kingdoms were established upon its ruins, but for the purpose of this inquiry it will suffice to note that of the Franks, which developed in the north of Gaul. This name, importing 'freedom,' had been applied by the Romans to the Germanic tribes who inhabited the banks of the Rhine. Towards the close of the fifth century the Frankish king, Clovis, who became an orthodox Christian, consolidated beneath his rule a kingdom which by 507 included the whole of Gaul. In this way it happened that the name of a German people was imposed upon a race which was mainly Celtic, and Gaul was known henceforward as France. The successors of Clovis, who were called the Merovings, did not inherit his ability. They degenerated into puppet kings who were content to leave the royal authority in the hands of officials styled the Mayors of the Palace. In 719 this office was held by a powerful military leader called Charles Martel.

On this German noble was imposed the task of averting the greatest danger which had threatened Europe since Themistocles defeated the Persians at Salamis. To understand how this befell it is necessary to go back to events which had happened a century before in a distant corner of Asia. Christianity, though itself the product of the Semitic race, found in Asia but little congenial soil in which to take root. Some six centuries after its foundation there appeared

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Destruction of the Western Empire by Germans. Rise of the Frankish power.

The rise of the Islamic religion and state in Arabia.

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in Arabia, amongst another branch of the same race, a religion which was destined to awake the fiercest enthusiasm of the East. The creed preached by Mahomet was a pure monotheism, and as such was a great advance upon the paganism it replaced. So intense was its recognition of the transcending power of God that all human creatures seemed to be reduced to a common level of insignificance before him. There is no room in the religion of Mahomet for the Hindu system of caste<sup>1</sup> and it acts wherever it goes as a levelling force. The development of elaborate rituals, with which the institution of caste is connected, is at variance with its central idea. Its moral code has more in common with the doctrines of Moses than those of Christ, for Mahomet sanctioned a restricted polygamy, and women were accorded a position much lower than that claimed for them by Christianity. On the other hand, Mahomet forbade his followers to use wine. He differed, moreover, from Moses in the stress he laid on a future life, though the rewards and punishments held out to the faithful in this world and the next were much less spiritual than those promised by the Christian religion. He adopted the ten commandments, but the only ceremonial prescribed was prayer, fasting, alms, pilgrimage, washing. When a holy war was proclaimed, fighting was regarded as a religious duty. God is presented as a king rather than as a father, a king to whose service the faithful are absolutely dedicated, and who rewards those who die in it with delights which appeal to the sensuous imagination. Death on the battle-field is, according to Mahomet, followed by the immediate translation of the believer to Paradise. Abraham, Moses, and Jesus were each

<sup>1</sup> Amongst the Moslems of India converted from Hinduism caste divisions have in some measure survived. Such divisions are none the less contrary to the spirit of Islam.

recognized as Prophets, but Mahomet claimed to have superseded them all, and after his death his authority was handed on to successors. 'Islam,' the name attached to this creed, connotes an absolute dedication to the will of God, and 'Moslem' denotes a person so dedicated. Mahomet, as the sole interpreter of the divine will, was able to claim the unlimited obedience of those who accepted him as such. Islam was therefore a state as well as a religion. It was, in fact, a theocracy whose doctrines were to be propagated by the sword, and the armies of Mahomet and his successors quickly became the masters of South-Western Asia.

The Byzantine Empire, based upon the tremendous fortress which Constantine had founded on the Bosphorus, guarded the eastern gate of Europe. But the armies of Islam, quickly conquering the Levant and Egypt, swept along the northern coast of Africa as far as the Straits of Gibraltar. In 711 they crossed to Spain and overthrew Roderic, the King of the Visigoths. Within ten years the soldiers of the Caliph had mastered Spain, and began to turn their attention to France. By 732 they had overrun Aquitaine under the leadership of their Emir, Abderrahman, and in October of that year their hosts were confronting the Franks under Charles Martel before the walls of Poitiers. 'A victorious line of march had been prolonged above a thousand miles from the rock of Gibraltar to the banks of the Loire; the repetition of an equal space would have carried the Saracens to the confines of Poland and the Highlands of Scotland; the Rhine is not more impassable than the Nile or Euphrates, and the Arabian fleet might have sailed without a naval combat into the mouth of the Thames. Perhaps the interpretation of the Koran would now be taught in the schools of Oxford, and her pulpits might

Arab conquest to the centre of France. The possible consequences of any further extension.

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Defeat of  
the Arabs  
by the  
Franks  
under  
Charles  
Martel at  
the battle  
of Poitiers,  
Oct. 732.

demonstrate to a circumcised people the sanctity and truth of the revelation of Mahomet.'<sup>1</sup>

But as at Marathon the tide of Oriental invasion was stayed by the armoured ranks of the Europeans. For seven days each army waited for the other to move; but on the eighth the Arabs attacked, and dashed themselves in vain against the close-locked lines of Frankish shields which withstood their onset 'like a wall of ice.' Hurlled back in disorder, their broken ranks were borne down by the sheer weight and strength of the advancing Franks. Both armies encamped on the field; but next morning the Arabs fled, and Charles Martel, who had rolled back this scorching tempest from the deserts of Arabia beyond the Pyrenees, was recognized as the saviour of Christendom. His successors came to be regarded as the champions of the Roman Church.

Pepin, son  
of Charles  
Martel,  
anointed  
King of  
the Franks  
by the  
Papacy,  
751.  
Recru-  
descence  
of the  
theocratic  
idea.

When the last of the Western Emperors was dethroned in 476, the Bishop of Rome, as head of the Latin Church, very quickly began to realize how great was his need of some arm strong enough to protect the Church in an age of increasing violence. The Frankish mayors of the palace had the strongest arm in Europe, and Pope Zacharias undertook to give the sanction of divine authority to the transfer of the crown from the head of the Meroving Childeric to that of Pepin, the son of Charles Martel. With his queen Bertrada he was solemnly anointed by Boniface at Soissons in 751. Amongst the Christians of the East, kings had long been accustomed to receive their crowns from bishops. It had also been so with the kings of the Visigoths, but never with the Merovingians. But anointing after the old Jewish fashion was quite new to Christendom. The next Pope, moreover, Stephen II., went a step further, and undertook to absolve Pepin from the

<sup>1</sup> Gibbon, *Decline and Fall of the Roman Empire*, vol. vii. pp. 18-19.



oath he had sworn to the deposed Childeric.<sup>1</sup> The Carolingian dynasty was thus represented to Europe as deriving its authority from divine right after the manner of Oriental monarchs.

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The enemy against whom the Papacy at first required a champion was the Byzantine Emperor who had reconquered Italy some time before and still clung to the fortress of Ravenna. From this stronghold the Empire was ejected by Aistulf, King of the Lombards, who proceeded, however, to deprive the Pope himself of his temporal dominions. Pope Stephen II. therefore appealed to Pepin, who broke the Lombard power, and restored and extended the sovereignty of the Pope over the territories in the neighbourhood of Rome.

The Frankish Kings recognized as official protectors of the Western Church.

Pepin's son, Charles the Great, known to the French as Charlemagne, consolidated practically the whole of the Teutonic tribes outside Britain under his rule. By force of arms his Empire was extended to include Hungary on the east, and to the south-west France and Spain, which he conquered from the Arabs as far as the Ebro. Italy he dominated in the interests of the Pope. By 800 his Empire included all the territory which had once been comprised in the Western Empire, and the whole of Germany as well. On Christmas Day 800, Charles the Great was crowned 'Emperor of the Romans' by Pope Leo III., in St. Peter's basilica at Rome.

Charles the Great, Pepin's son, consolidated Western Europe in one Empire. His coronation as 'Emperor of the Romans' in 800.

So began the Holy Roman Empire, which in one form or another endured for more than a thousand years until it was extinguished by Napoleon in 1806. Its creation in 800 was directly due to the tradition of a world state which the real Roman Empire had left behind. Greece had divided one corner of Europe into hundreds of miniature states. Rome had gone to the opposite extreme, and collected a great part of Europe with the adjacent parts of Asia and Africa

The Roman Empire had created the idea of a world state.

<sup>1</sup> C. R. L. Fletcher, *The Making of Western Europe*, pp. 226-227.

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into one state, which seemed to its citizens to be coterminous with the world itself. From the accession of the Emperor Nerva in 96 A.D., Rome had for nearly a century maintained such a condition of repose as civilized Europe has never before or since enjoyed. It established, moreover, a tradition of just and orderly government which, through all the centuries of violence that followed its fall, the people of Europe never forgot. The Greeks had been unable to conceive a state larger than the walls of one city could hold. The Roman Empire impressed Europe with the idea that there should, by rights, be one universal state which should include the whole human race.

The conception of a world state fostered by Christianity.

Throughout the centuries of political chaos which followed the downfall of the Western Empire, the Church helped to remind Europe of the unity which Rome had once given her. This cosmic conception of the state received a decided impetus from Christian morality which enjoined on the individual an absolute subordination of his own interests, not to family, friends, or race, but to all mankind. The Kingdom of Heaven was a spiritual commonwealth which included the living as well as the dead, and the recognition of its infinite claim to the obedience of its members was exemplified in the life and death of the Founder Himself. As the subjects of the Roman Empire came to imbibe these doctrines they coloured them by their own political conceptions. They thought of the Empire as that province of the Kingdom of Heaven which contained the living portion of mankind, of the Emperor as its divinely appointed administrator on earth, and of the individual as the subject bound to accord to Imperial sovereignty the unquestioning obedience which was due from man to God Himself.<sup>1</sup> This deeply rooted belief in a universal and divinely ordered State

<sup>1</sup> See Note C at end of this chapter, p. 83.

survived the division of both Empire and Church, and even imposed itself upon the Teutonic barbarians who destroyed the Western Empire. Its disappearance in 476 fostered the idea of the Church as a spiritual state; but the Papacy quickly felt the want of some secular arm to enforce its mandates and to protect the Church against rebellion from within as well as the assaults of paganism from without. It required an Emperor as well as a Pope to secure the obedience of kings and rulers as well as their subjects to papal decrees. Laity and clergy alike began to ask why the Empire should not be revived in the person of the most powerful ruler that Europe had produced since the age of Constantine, and the coronation of Charles by the Pope in 800 was the natural result.

The force behind the new system was the Teutonic people which had destroyed the Western Empire and had then saved Europe from the Arab invasion. When first these races threatened Rome, they were living after the manner of tribal societies in a perpetual state of warfare and flux, the one constantly merging into the other. They were, as Stubbs describes them, 'singularly capable of entering into new combinations; singularly liable to be united and dissolved in short-lived confederations.'<sup>1</sup> On the other hand, amongst these tribes were preserved the same primitive customs as existed amongst the progenitors of the Greeks when they branched southwards and settled in the peninsula which bears their name. Tacitus, in his account of the Germans, tells how 'their love of liberty makes them independent to a fault: they do not assemble all at once as though they were under orders: but two or three days are wasted by their delay in arriving. They take their seats as they come, all in full armour. Silence is demanded by the priests, to whom are

The power  
behind the  
Holy  
Roman  
Empire  
was  
German.  
Instability  
of German  
society.  
Their free  
customs  
described  
by Tacitus.

<sup>1</sup> Stubbs, *Constitutional History*, p. 36.

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Failure of  
the Holy  
Roman  
Empire to  
organize  
the  
Germans  
as a state,  
and con-  
sequent  
failure  
of the  
Germans  
to develop  
the  
principle  
of the  
common-  
wealth  
implicit  
in their  
primitive  
customs.

granted special powers of coercion. Next, the king, or one of the chief men, according to claims of age, lineage, or military glory, receives a hearing, which he obtains more by the power of persuasion than by any right of command. If the opinion expressed displeases them, their murmurs reject it; if they approve they clash their spears. Such applause is considered the most honourable form of assent.<sup>1</sup>

In customs such as these may be discerned the seed from which the commonwealths of Europe have sprung. Mountains and seas combined to divide Greek society into a number of small neighbourhoods, and kept them from merging into one another, so that each developed a corporate sense of its own. But the home of the Teutonic race in the forests of Northern Europe was not so divided into pockets where small societies could collect, solidify, and develop the *esprit de corps* which is the necessary basis of the organic state. In the absence of physical frontiers the only bond by which these tribes could be united in a state was race, not locality; and until the tribal organization had yielded to that of the state it was impossible that the principle of the commonwealth should begin to develop. It was in this that the German Emperors signally failed. Several of Charles's successors were powerful rulers, and had their energies been confined to organizing Germany, they would have created a state capable of commanding not only the obedience but also the loyalty of the German people. Order would have been established, and the free Teutonic spirit as in England would have developed the monarchy into a commonwealth in which sovereignty was based on the popular will. Once accustomed to obey a German government the Teutonic tribes would have become a German nation.

<sup>1</sup> Tacitus, *Germania*, trans. W. H. Fyfe, p. 96.

As it was, the successors of Charles, lured by the glamour of this adopted title, exhausted their energies in endeavouring to realize their position as Emperors of Rome by the conquest of Italy. In Germany itself a condition of disorder was allowed to continue, until the weak were driven to barter their freedom to the strong in exchange for protection. The feudal system which Germany now developed was nothing more nor less than the attempt of a society which had failed to organize itself as a state to make contract do the work of patriotism. The Emperors themselves accepted the principle, distributing their sovereignty amongst their princes and nobles in exchange for support in their Italian wars. The result was that the rank and file served as the retainers of the feudal potentate, not as the subjects of the Emperor. While the attention of the Emperor was absorbed in Italy, the feudal lords were the *de facto* governments of their respective principalities in Germany, and the Emperor never established a direct relation of sovereignty with the German people themselves. As Emperor he never attained the right to tax the people direct. It was to the local prince that they paid their taxes and looked for orders. It was him they followed when he chose to disobey the orders of the Emperor. Against the disobedience of a prince the only remedy of the Emperor was war. In taking sides for or against the Emperor the other princes were guided by their own interests, and not by those of the Empire, still less by the interests of Christendom or mankind. The German monarchs, in masquerading as the Emperors of humanity, were diverted from establishing a government for the German people. The Holy Roman Empire was not even a fiction. It was a sham which actually deceived men and hid from their eyes the less pretentious but more valuable

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I

Chaos  
resulting  
from the  
attempt  
to base the  
govern-  
ment of  
the Holy  
Roman  
Empire  
on con-  
tract or  
feudalism.

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reality which might have been achieved. In theory, the Emperor was the temporal Vicegerent of God, the King of Kings, from whose authority the princes of Europe derived their own. In practice, many of these princes, like those of England (Richard I. was an unwilling exception), repudiated his authority. Those who acknowledged it persistently disregarded it whenever they saw a chance of aggrandizing themselves at the expense of their neighbours; and the Emperor had no means of enforcing it, except those he controlled by virtue of his own inherited possessions. His election as Emperor added nothing to the actual power he already possessed as an hereditary prince. His authority, therefore, was similar to that of a foreman who secures obedience from the members of his gang only so far as he is able to coerce them with his own fists, a system which makes for peace only when the foreman is a person of gigantic strength. When the practice was established amongst the German princes of electing the Emperor, the electors were careful to avoid the choice of a sovereign strong enough to coerce them. Society was supposed to be constructed in accordance with a lofty conception which had grown from the habit of idealizing the Roman Empire. The Emperors of the Middle Ages accepted the style and functions of Empire without the Imperium. They were given the right to command all men without the actual power to enforce obedience. In practice they did little to cure the intestine disorders of Europe and nothing to defend it from the encroachments of Asia. That all-important task was left to the Eastern remnant of the real Roman Empire, which guarded the Bosphorus till the close of the Middle Ages. German sovereigns who claimed to be the champions of European civilization were unable to marshal one soldier to save from the Turk the very countries in which it had been

cradled. In the Balkan Peninsula centuries of misery have commemorated the failure of the Holy Roman Empire to justify the title and traditions it assumed.

After the fall of the Roman Empire the Teutonic races who had destroyed it were the strongest element of European society. If Charles and his successors had confined themselves to the task of consolidating their own people into a state, the Germans would have been the first people to realize nationality in the modern sense of the term. As it was, they were the last, and the penalty they paid for this failure was a thousand years of fratricidal strife in which Europe at large was repeatedly involved. Till the time of Luther it would be difficult to point to any period in which German armies were not fighting each other on German soil. In the seventeenth century Germany was devastated by the Thirty Years' War. In the eighteenth century the German States were involved in the quarrels of Austria and Prussia. At the beginning of the nineteenth century Germany was trampled under foot by Napoleonic armies largely reinforced by German troops. In the struggle between Austria and Prussia of 1866 the States of Northern Germany were at war with those of the South. Had Charles the Great and his successors united Germany as the Norman and Plantagenet kings united England, it is not too much to say that most of the wars which have since distracted not only Germany but Europe itself might never have been fought. Up to the year 1870, the Germans might still have been described in the words applied by Stubbs to their primitive ancestors as being 'singularly capable of entering into new combinations: singularly liable to be united and dissolved in short-lived confederations.' And the process was one of incessant violence, which was constantly spreading to the whole continent of Europe.<sup>1</sup>

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Hence the Germans were the last instead of the first European race to realize the national state, and their internal discords convulsed all Europe.

<sup>1</sup> Bryce, *The Holy Roman Empire*, chap. xx.

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Military  
rule pre-  
vented the  
principle  
of the  
common-  
wealth  
from  
developing.

In the course of ages of violence the rudimentary institutions of freedom, to which Tacitus bears evidence, were for the most part extinguished by the necessities of military rule. 'The Diet, originally an assembly of the whole people, and thereafter of the feudal tenants-in-chief, meeting from time to time like our early English Parliaments, became in A.D. 1654 a permanent body, at which the electors, princes, and cities were represented by their envoys. In other words, it was not so much a national Parliament as an international congress of diplomatists. Where the sacrifice of imperial, or rather federal, rights to state rights was so complete, we may wonder that the farce of an Empire should have been retained at all. A mere German Empire would probably have perished; but the Teutonic people could not bring itself to abandon the venerable heritage of Rome.'<sup>1</sup> Except in some isolated cities personal authority backed by force was the only kind of government which counted. And, as usual with despotic governments, a supernatural basis was claimed for its authority. The idea of the commonwealth atrophied; and if it has flourished on the continent of Europe for the last century, it is rather as a growth transplanted from England than as one indigenous to the soil itself. 'Throughout Europe reformers have copied English political arrangements.'<sup>2</sup> But in spite of this imitation and of real progress made by the nations of continental Europe in remodelling their institutions on the principle of the commonwealth, the theocratic conception of government survives to an extent hardly realized by the people of the British Empire or by those of its product, the United States of America.<sup>3</sup> Belief in

<sup>1</sup> Bryce, *The Holy Roman Empire*, chap. xx. pp. 391-392.

<sup>2</sup> Woodrow Wilson, *The State*, p. 435.

<sup>3</sup> See Note D at end of this chapter, p. 84.



force as the ultimate basis of government is the natural consequence of the protracted violence into which Europe was plunged by the failure of Germany till 1870 to realize for herself the unity of a state. Throughout the continent of Europe from the downfall of the Roman Empire there was no period during which order was maintained long enough to create the tradition that the law is above the visible ruler and more entitled than him to the ultimate obedience of the citizen. The upshot has been that, with the partial exception of Switzerland and Holland, the principle of the commonwealth failed to re-establish itself on the continent of Europe with sufficient strength to counteract the theocratic and despotic tradition of government which the Roman Empire left behind it. The ideas of government which prevailed in Germany to the first decades of the nineteenth century were, no less than those of the Latin peoples, inherited from Rome. The shade of that vanished Empire rose from its grave to haunt its destroyers. Hovering before their eyes, this phantom beguiled them into the morass of Italian politics at the outset of their march towards German union and freedom. From the one sure path their footsteps strayed, never to refind it for a thousand years.

Voltaire uttered the epitaph of this mighty sham when he wrote that it was neither Holy, nor Roman, nor yet an Empire. It is the greatest example which history offers of the mischief done by false coin, of the frightful power of vain deceits to lead men to their own undoing. Civilization was only saved for the world by the gradual development, in spite of it, of a system of society less ambitious, but more firmly founded even than the original Empire itself. The Roman Empire at its prime had enforced order, earned the respect and even the gratitude of its subjects. But it was too large and too comprehensive

States  
gradually  
developed  
in Europe  
on the  
basis of  
nationality.

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to wake the spirit of patriotism which the Athenians at Marathon, the Spartans at Thermopylae, or the Romans themselves, had shown. Still less was a revival so vague and feeble as the Holy Roman Empire calculated to arouse this kind of enthusiasm. The command of the elected Emperor of Christendom left men cold who would spring to arms at the call of a chief or a prince who really meted out some kind of justice amongst themselves, especially if he were of their own blood and was felt to personify their common kinship with one another. Gradually, different tribes in England, France and Spain were consolidated into kingdoms much larger than the city states of the ancient world, which yet evoked from their citizens the same kind of spontaneous patriotism. The Holy Roman Empire appealed to ideas which had not penetrated to the heart and rooted themselves in the habits of ordinary men. Government, to be stable, must be founded not only on respect, but on the affection and enthusiasm of the people themselves. If men could not be brought in masses to dedicate their lives to mankind, it was an immense step that they should be willing to lay them down for so limited a section of the race as England, France, or Spain contained.

Appear-  
ance of  
France,

Whilst, therefore, the organs of universal government were atrophied for want of exercise, the peoples of Europe were gathering into units of government according to neighbourhood and race. France, with its population still mainly Celtic, emerged as a separate kingdom in 843. Under a succession of powerful monarchs the French rapidly acquired a national consciousness of their own, which was greatly stimulated by the leading part which they took in the Crusades against the Saracens. From the welter of Christian and Moorish kingdoms in the Iberian Peninsula the Portuguese nation emerges in the twelfth century and the Spanish in the fifteenth.

Portugal,  
Spain,

In all three fragments of the Roman Empire the traditions of despotic government were preserved intact. Italy, where the position of the Pope was an insuperable bar to the establishment of a national monarchy or unity of any kind, remained under the nominal suzerainty of the German Emperor, a patchwork of princedoms and republics. In the valleys of the Alps, commonwealths were formed, which ultimately succeeded where the Greeks had failed, in uniting as a federal state. By their long and heroic struggle with Spain the Teutonic cities which grew up at the mouth of the Rhine were united by the genius of William the Silent as the Dutch Republic in the sixteenth century. But even these commonwealths were deeply imbued with the law and traditions of the Roman Empire.

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I  
Italy,

Switzer-  
land,

The  
Nether-  
lands.

Meantime, in the islands on the western coast of Europe, which certain of the Teutonic tribes had partly conquered and occupied, was appearing the state which forms the subject of this inquiry. It was there, and not in Romanized Germany itself, that the Teutonic tradition of freedom was able to take root, and reproduce once more the principle of government which had first blossomed in Greece and almost vanished in the Roman Empire. In England was planted a commonwealth destined to spread until it included races more numerous and diverse than ever obeyed Rome.

Reappear-  
ance of the  
principle  
of the  
common-  
wealth in  
England.

In the foregoing chapter the principle of the commonwealth has been traced from ancient Greece where the idea found its fullest expression in the republic of Athens. It is still further developed by the Roman Empire in the vertebrae given to European society by Roman law, even though liberty itself is gradually obscured by the reversion of the Empire to purely autocratic and military rule. Then, with the collapse of the Empire, it is lost for nearly a thousand

Recapitu-  
lation.

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years in the death-struggles of the Roman system against the successive waves of barbarians from the North, which are partly repelled, and partly absorbed, by the powerful monarchies gradually founded in Spain, in France and in central Europe. But meanwhile the idea of liberty, first realized in Greece and Rome, was sleeping, not dead. It still breathed—though under a great weight of established customs and forms—in the notions of law which the Holy Roman Empire had inherited from its great prototype. Gradually, as neither the separate autocracies nor the great European theocracy proved equal to human needs, it flickered to life in the communes which united to form the Swiss Confederacy and the commercial communities of northern Germany and the Netherlands. Then with the Reformation and the Renaissance it recovered its position in the forefront of European ideals, and has been gradually extended, now by one community, now by another, but chiefly by the community founded in the dark ages by Teutonic invaders of the British Isles.

## NOTE A

## REVERSION OF ROME TO THEOCRACY

See page  
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‘While to the educated classes in old Rome the Emperor’s legal Sovereignty bore the guise of a devolution from that of the people, his provincial subjects, who knew little or nothing of these legal theories, regarded it as the direct and natural consequence of Conquest. By the general, probably the universal, law of antiquity, capture in war made the captured person a slave *de iure*. Much more then does conquest carry the right of legal command. Conquest is the most direct and emphatic assertion of *de facto* supremacy, and as the *de facto* power of the Romans covered nearly the whole of the civilized world, maintained itself without difficulty, and acted on fixed principles in a regular way, it speedily passed into Legal Right, a right not unwillingly recognized by those to whom Roman power meant Roman peace. This idea is happily expressed by Virgil in the line applied to Augustus:

"Victorque volentes  
Per populos dat iura,"

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1

while the suggestion of a divine power encircling the irresistible conqueror, an idea always familiar to the East, appears in the words :

"viamque adfectat Olympo,"

which complete the passage.

'The feeling that the power actually supreme has received divine sanction by being permitted to prevail, that it has thereby become rightful, and that it has, because it is rightful, a claim to obedience, is clearly put in writings which were destined, more than any others, to rule the minds of men for many centuries to come.

"Let every soul be subject unto the higher powers. For there is no power but of (= from) God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation (*lit.* judgment). For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same; for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil" (Rom. xiii. 1-5).

"Submit yourselves to every ordinance of man for the Lord's sake; whether it be to the Emperor, as supreme, or unto Governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well. For so is the will of God, that with well-doing ye may put to silence (*lit.* bridle) the ignorance of foolish men" (1 Pet. ii. 13-15).

'Here the authority of the Emperor is not only recognized as being *de iure* because it exists and is irresistible, but is deemed, because it exists, to have divine sanction, and thus a religious claim on the obedience of the Christian, while at the same time, in the reference to the fact that the power of the magistrate is exercised, and is given by God that it be exercised, for good, there is contained the germ of the doctrine that the Power may be disobeyed (? resisted) when he acts for evil; as St. Peter himself is related to have said, "We ought to obey God rather than men" (Acts v. 29).'<sup>1</sup>

<sup>1</sup> Bryce, *Studies in History and Jurisprudence*, vol. ii. pp. 78-79.

## SURVIVAL OF REPUBLICAN TRADITION IN ROMAN LAW

See page  
63.

‘Justinian and his successors had in the fullest sense of the word complete, unlimited, and exclusive legal sovereignty; and the people of old Rome who are talked of in the *Digest*, by the lawyers of the second and third centuries, as the source of the Emperor’s powers, were not in A.D. 533, except in a vague *de iure* sense, actual subjects of Justinian, being in fact ruled by the Ostrogothic king Athalarich (grandson of the great Theodoric). But it is noteworthy that the lawyers also assigned to the people as a whole, entirely apart from any political organization in any assembly, the right of making law by creating and following a custom, together with that of repealing a customary law by ceasing to observe it, *i.e.* by desuetude, and that they justify the existence of such a right by comparing it with that which the people exercise by voting in an assembly. “What difference,” says Julian, writing under Hadrian, “does it make whether the people declares its will by voting or by its practice and acts, seeing that the laws themselves bind us only because they have been approved by the people?” In the *Institutes* of Justinian the Emperor’s legislative power, though complete, is still grounded on a delegation formerly made by the people.

‘It need hardly be observed that if Tribonian and the other commissioners employed by Justinian to condense and arrange the old law had, instead of inserting in their compilation sentences written three or four centuries before their time, taken it upon themselves to state the doctrine of legislative sovereignty as it existed in their own time, they would not have used the language of the old jurists, language which even in the time of those jurists represented theory rather than fact, just as Blackstone’s language about the right of the Crown to “veto” legislation in England represents the practice of a period that had ended sixty years before. But those who in the Middle Ages studied the texts of the Roman law cared little and knew less about Roman history, so that the republican doctrine of popular sovereignty which they found in the *Digest* may have had far more authority in their eyes than it had in those of the contemporaries of Tribonian, to whom it was merely a pretty antiquarian fiction.

‘These were the legal notions of Sovereignty with which the modern world started—the sharply outlined Sovereignty of an autocratic Emperor, and the shadowy, suspended, yet in a sense concurrent or at least resumable, Sovereignty of the People, expressed partly in the recognition of their right to delegate legislation to the monarch, partly in their continued exercise of legislation by Custom.’<sup>1</sup>

<sup>1</sup> Bryce, *Studies in History and Jurisprudence*, vol. ii. pp. 76-77.

## NOTE C

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I

## THE MEDIAEVAL BELIEF IN UNIVERSAL MONARCHY

‘In the earlier Middle Ages Europe, still half-barbarous, was the prey of violence. Its greatest need was Justice, and a power strong enough and pious enough to execute justice as the minister of God. The one force that confronted violence and rapacity was Religion. All had one religion, and though many by sinfulness of life belied their faith, none doubted its truth. Neither did any one doubt where the seat of authority lay. Rome, whence the Caesars had ruled the world—Rome, where the chief of the Apostles had exercised the pastorate given him by God when God walked the earth—was the divinely appointed source of all lawful power. Whether that power was to be wielded by two rulers, each directly representing the Almighty, or whether the secular monarch was to be the servant of the spiritual—this was a question on which men were divided. But that the power of the secular ruler was consecrated by a Divine commission, and, being so consecrated, was appointed for all time and for all mankind—upon this they were at one. It was a small Christian world, which reached only from the Tagus to the Vistula: so a universal monarchy seemed less strange then than it does now. Nations were as yet scarcely conscious of themselves, and the strife that desolated Europe was more frequently within than between its countries. The disobedience of some rulers to the Emperor shook the theories of those who took dreams for realities hardly more than did the disobedience of a knot of heretics to the Pope.’<sup>1</sup>

The idea of a universal monarchy ordained by Divine wisdom is reflected in a letter addressed by Petrarch to the Roman people.

‘When was there ever such peace, such tranquillity, such justice, such honour paid to virtue, such rewards distributed to the good and punishments to the bad, when was ever the state so wisely guided, as in the time when the world had obtained one head, and that head Rome; the very time wherein God deigned to be born of a virgin and dwell upon earth. To every single body there has been given a head; the whole world therefore also, which is called by the poet a great body, ought to be content with one temporal head. For every two-headed animal is monstrous; how much more horrible and hideous a portent must be a creature with a thousand different heads, biting and fighting against one another! If, however, it is necessary that there be more heads than one, it is nevertheless evident that there ought to be one to restrain all and preside over all, that so the peace of the whole body may abide unshaken. Assuredly both in heaven and in earth the sovereignty of one has always been best.’<sup>2</sup>

<sup>1</sup> Bryce, *The Holy Roman Empire*, p. 500.

<sup>2</sup> *Ibid.* p. 266.

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## NOTE D

## SURVIVAL OF THE THEOCRATIC IDEA IN MODERN EUROPE

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Lecky testifies to the hold which theocratic ideas still had on public opinion in England up to the close of the seventeenth century. 'The doctrine of non-resistance in its extreme form was taught in the Homilies of the Church, embodied in the oath of allegiance, in the corporation oath of Charles II., and in the declaration prescribed by the Act of Uniformity, enrolled by great Anglican casuists among the leading tenets of Christianity, and persistently enforced from the pulpit. It had become, as a later bishop truly said, "the distinguishing character of the Church of England." At a time when the Constitution was still unformed, when every institution of freedom and every bulwark against despotism was continually assailed, the authorized religious teachers of the nation were incessantly inculcating this doctrine, and it may probably be said without exaggeration that it occupied a more prominent position in the preaching and the literature of the Anglican Church than any other tenet in the whole compass of theology. Even Burnet and Tillotson, who were men of unquestionable honesty, and who subsequently took a conspicuous part on the side of the Revolution, when attending Russell in his last hours, had impressed upon him in the strongest manner the duty of accepting the doctrine of the absolute unlawfulness of resistance, and had clearly intimated that if he did not do so they could feel no confidence in his salvation. The clergy who attended Monmouth at his execution told him he could not belong to the Church of England unless he acknowledged it. The University of Cambridge in 1679, and the University of Oxford on the occasion of the death of Russell, authoritatively proclaimed it, and the latter university consigned the leading Whig writings in defence of freedom to the flames, and prohibited all students from reading them. The immense popularity which the miracle of the royal touch had acquired, indicated only too faithfully the blind and passionate loyalty of the time: nor was there any other period in English history in which the spirit of independence and the bias in favour of freedom which had long characterized the English people were so little shown as in the years that followed the Restoration. . . . Had the old dynasty adhered to the national faith, its position would have been impregnable, and in the existing disposition of men's minds it was neither impossible nor improbable that the free institutions of England would have shared the fate of those of Spain, of Italy, and of France. Most happily for the country, a bigoted Catholic, singularly destitute both of the tact and sagacity of a statesman, and of the qualities that win the affection of a people, mounted the throne, devoted all the



energies of his nature and all the resources of his position to extending the religion most hateful to his people, attacked with a strange fatuity the very Church on whose teaching the monarchical enthusiasm mainly rested, and thus drove the most loyal of his subjects into violent opposition. . . . The doctrine of the indefeasible right of the legitimate sovereign, and of the absolute sinfulness of resistance, was in the eyes of the great majority of Englishmen the cardinal principle of political morality, and a blind, unqualified, unquestioning loyalty was the strongest and most natural form of political enthusiasm. This was the real danger to English liberty. Until this tone of thought and feeling was seriously modified, free institutions never could take root, and even after the intervention of William it was quite possible, and in the eyes of most Englishmen eminently desirable, that a Government should have been established so nearly legitimate as to receive the support of this enthusiasm—the consecration of this belief.’<sup>1</sup>

In Prussia the belief in Divine right was as vigorous as ever in the first half of the nineteenth century. ‘To the nobles and peasants, criticism of, or opposition to, the King had in it something of sacrilege; the words “by the Grace of God” added to the royal title were more than an empty phrase. Society was still organized on the old patriarchal basis: at the bottom was the peasant; above him was the *gnädiger Herr*;<sup>2</sup> above him, *Unser allergnädigste Herr*;<sup>3</sup> the King, who lived in Berlin; and above him, the *Herr Gott* in Heaven.’<sup>5</sup> A German electorate when appealed to by the Crown has usually supported the monarch against their own representatives. This explains (what Englishmen find it so difficult to understand) why German legislatures have never, as in all communities of British origin, obtained control of the executive.

The political creed of Bismarck had, as Mr. Headlam shows, its roots in theocratic ideas. ‘It is not at first apparent what necessary connection there is between monarchical government and Christian faith. For Bismarck they were ever inseparably bound together; nothing but religious belief would have reconciled him to a form of government so repugnant to natural human reason. “If I were not a Christian, I would be a Republican,” he said many years later; in Christianity he found the only support against revolution and socialism. He was not the man to be beguiled by romantic sentiment; he was not a courtier to be blinded by the pomp and ceremony of royalty; he was too stubborn and independent to acquiesce in the arbitrary rule of a single man. He could only obey the king if the king himself held his authority as the representative of a higher

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. i. pp. 10-14.

<sup>2</sup> Gracious Lord.

<sup>3</sup> Our all-Gracious Lord the King.

<sup>4</sup> Lord God.

<sup>5</sup> Headlam, *Bismarck*, p. 13.

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power. Bismarck was accustomed to follow out his thought to its conclusions. To whom did the King owe his power? There was only one alternative: to the people or to God. If to the people, then it was a mere question of convenience whether the monarchy were continued in form; there was little to choose between a constitutional monarchy where the king was appointed by the people and controlled by Parliament, and an avowed republic. This was the principle held by nearly all his contemporaries. He deliberately rejected it. He did not hold that the voice of the people was the voice of God. This belief did not satisfy his moral sense; it seemed in public life to leave all to interest and ambition and nothing to duty. It did not satisfy his critical intellect; the word "people" was to him a vague idea. The service of the people or of the King by the Grace of God, this was the struggle which was soon to be fought out.<sup>1</sup>

It is this conception of government which underlies a speech which Bismarck addressed to the Prussian Chamber in 1848. 'The strife of principles which during this year has shattered Europe to its foundations is one in which no compromise is possible. They rest on opposite bases. The one draws its law from what is called the will of the people, in truth, however, from the law of the strongest on the barricades. The other rests on authority created by God, an authority by the grace of God, and seeks its development in organic connection with the existing and constitutional legal status. . . . The decision on these principles will come not by Parliamentary debate, not by majorities of eleven votes; sooner or later the God who directs the battle will cast his iron dice.'<sup>2</sup> The tradition which inspired these words was not Teutonic but Roman, and not in truth Roman but Oriental. Indeed we have the authority of a German historian for believing that Frederick William, the monarch whom Bismarck served at this time, actually regarded himself, like a Hebrew King, as the mouthpiece of Divine commands. 'The royal crown seemed to him surrounded by a mystic radiance, which became for him who wore it the source of a divine inspiration not vouchsafed to other mortals. He said once, in 1844, to Bunsen: "You all mean well by me, and are very skilful in executing plans; but there are certain things that no one but a king can know, which I myself did not know when I was Crown Prince, and have perceived only since I became King."'<sup>3</sup> Many of the speeches of his great nephew, the present Emperor of Germany, have been distinctly tinged by the same idea, e.g. his speech at the unveiling of the Coligny statue at Wilhelmshaven on October 19, 1912. 'I

<sup>1</sup> Headlam, *Bismarck*, pp. 31-32.

<sup>2</sup> *Ibid.* p. 53.

<sup>3</sup> Quoted from *Preuss. Jahrbücher*, iv. vol. 63, p. 528 in Von Sybel's *The Founding of the German Empire*, vol. i. pp. 113-114.

hope then that this statue may give each of you who passes by, young and old, strength and vigour on his path through life, and that each of you may be minded to remain loyal, body and soul, to his King and may remember that he will be ready to do that only if he remains loyal to his Heavenly King.'

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But perhaps the crudest expression which the theocratic idea has ever received in modern times was on the morrow of the battle of Waterloo, when the leading powers of continental Europe leagued themselves in the 'Holy Alliance' and announced 'that they "in consequence of the great events (those leading to the defeat of Napoleon) . . . and of the blessings which it has pleased Divine Providence to shed upon those states . . . declare solemnly, that the present act has no other object than to show . . . their unwavering determination to adopt for the only rule of their conduct . . . the precepts of their holy religion, the precepts of justice, of charity, and of peace. . . ." Considering themselves "only the members of one Christian nation" they looked upon themselves as "delegated by Providence to govern three branches of the same family, to wit: Austria, Prussia, and Russia." They confessed that there was really no other sovereign than "Him to whom alone power belongs of right," etc. The title of the league is derived from the closing paragraph of the treaty (September 26, 1815):—

'ARTICLE III.—All powers which wish solemnly to profess the sacred principles which have delegated this act, and who shall acknowledge how important it is to the happiness of nations, too long disturbed, that these truths shall henceforth exercise upon human destinies all the influence which belongs to them, shall be received with as much readiness as affection, into this Holy Alliance."

'Into this combination France, Spain, Naples, and Sardinia entered. . . . At Verona the allies signed a secret treaty (November 22, 1822) to which only the names of Metternich, Chateaubriand, Bernstet (Prussia), and Nesselrode appear. The first two articles of this instrument are of especial interest.

'“The undersigned, specially authorized to make some additions to the treaty of the Holy Alliance, after having exchanged their respective credentials, have agreed as follows :—

'“ARTICLE I.—The high contracting powers, being convinced that the system of representative government is equally as incompatible with the monarchical principles as the maxim of the sovereignty of the people with the divine right, engage mutually, in the most solemn manner, to use all their efforts to put an end to the system of representative governments, in whatever country it may exist in Europe, and to prevent its being introduced in those countries where it is not yet known.

'“ARTICLE II.—As it cannot be doubted that the liberty of

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the press is the most powerful means used by the pretended supporters of the rights of nations, to the detriment of those Princes, the high contracting parties promise reciprocally to adopt all proper measures to suppress it, not only in their own states, but also in the rest of Europe.”<sup>1</sup>

<sup>1</sup> Henderson, *American Diplomatic Questions*, pp. 307, 308, 314.

## CHAPTER II

### THE ENGLISH COMMONWEALTH

WHEN the great body of the German people first attained their national unity in 1870, their kinsmen, by whom Britain had been colonized in the dark ages, had already been united for eight centuries. Statehood, not anarchy, is the road to freedom, and only when it has been reached can the principle of the commonwealth begin to be realized. Hence it was in the island and not on the mainland that the instinct of freedom which is implicit in the customs of the Germanic race first developed that principle. This, however, was in no way due to any special merit of the tribes which invaded Britain but only to the insular character of their new home. In Greece the states had grown up behind mountain walls. The straits which separated England from the Continent, secluded there, as by a moat, a section of Germanic people not too large to develop a social will which they could use as the actuating principle of their government. 'In all ages and among all changes of inhabitants the insular character of Britain has been one of the ruling facts of its history. Its people, of whatever race or speech, whatever their political condition at home or their political relation to other countries, have been above all things pre-eminently islanders. This must be borne in mind through the whole of British history. We are not dealing with Celts, Romans, Teutons simply as such,

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Teutonic  
custom  
attained  
its natural  
develop-  
ment in  
England  
instead of  
Germany.

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Their  
insular  
situation  
protected  
the  
Teutonic  
conquerors  
of Britain  
from  
Romanizing  
influence.

but with Celts, Romans, Teutons, modified by the fact that they dwelled in a great island, which was cut off in many ways from the rest of the world, and which acted in many things as a separate world of itself.<sup>1</sup>

The Teutonic tribes which invaded Britain in the third and fourth centuries were almost entirely free from the influence of Rome.<sup>2</sup> To what extent they spared and assimilated the Romanized Britons can never be ascertained and would not greatly concern the present inquiry if it could. That Roman civilization was displaced by the custom, language, and religion of the Germanic invaders is the really important fact and one which is fortunately beyond dispute. 'A germ of political and social life was brought into Britain which, changing from generation to generation but never itself exchanged for any other system, borrowing from foreign sources but assimilating what it borrowed with its own essence, changing its outward shape but abiding untouched in its true substance, has lived and grown through fourteen hundred years into the law, the constitution, the social being of England.'<sup>3</sup> But the roads which the Romans had built remained long after their civilization was blotted out and exercised a certain unifying influence on the Saxon conquerors. In Ireland as in Germany the growth of statehood in the dark ages was choked for want of those physical arteries with which her engineers had equipped the provinces of Rome.

Failure of  
the Saxons  
to unite  
England,  
which  
drifted  
towards  
feudalism.

In spite of this advantage, however, the Teutonic invaders of Britain may be described no less than their kinsmen in Germany as 'singularly capable of entering into new combinations; singularly liable to be united and dissolved in short-lived confederations.' It was only when in the ninth century they had

<sup>1</sup> Freeman, 'History of England,' *Ency. Brit.* 10th ed. vol. viii. p. 264.

<sup>2</sup> *Ibid.* p. 266.

<sup>3</sup> *Ibid.* pp. 276-277.

to face a further invasion of their Norse kinsmen that some kind of unity began to be forced on England. 'The first half of the tenth century gave the West-Saxon kings a position in Britain such as no English kings of any kingdom had held before them. Dominant in their own island, claiming and, whenever they could, exercising a supremacy over the other princes of the island, their position in the island world of Britain was analogous to the position of the Western emperors in continental Europe. It was in fact an imperial position. As such it was marked by the assumption of the imperial title, *monarcha*, *imperator*, *basileus*, *Augustus*, and even *Caesar*. These titles were meant at once to assert the imperial supremacy of the English kings within their own world, and to deny any supremacy over Britain on the part of either of the lords of the continental world. When we remember that some, both of the Teutonic and Celtic princes of Britain, had been the men of Charles the Great, the denial of all supremacy in the Caesars of the mainland was not needless. Indeed that denial was formally made over and over again at various times down to the reign of Henry VIII. . . . If the king of the English was looked on as the emperor of another world, the primate of all England was also looked on, and was sometimes directly spoken of, as the Pope of another world.'<sup>1</sup> But as in Europe so in England disunion dogged the footsteps of the Teutonic race. The Saxons never finally established the principle of one paramount authority for all citizens of all degrees. As a natural consequence life and property were never really secure, and the contractual principle of feudalism began to obtain a hold over English society.

It was William the Conqueror who laid the

<sup>1</sup> Freeman, 'History of England,' *Ency. Brit.* 10th ed. vol. viii. pp. 284-285, 295.

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How  
William  
the  
Conqueror  
imposed  
statehood  
on  
England.

foundations of statehood in England. He, through the native vigour of his character, and his minister Lanfranc through his training in the law-schools of Pavia, had grasped, as the Germanic Emperors never grasped, the essential principle of Roman government. 'When Domesday was finished in 1086, William gathered all the landowners of his kingdom, great and small, whether his tenants-in-chief or the tenants of an intermediate lord, and made them all become his men. *No one act in English history is more important than this.* . . . It established the principle that, whatever duty a man might owe to any inferior lord, his duty to his sovereign lord the king came first. When this rule was once established, the mightiest earl in England could never be to William what William himself was to his own lord, the king of the French. . . . The notion that William introduced a "feudal system" into England is a delusion which shows utter ignorance, both of the position of William and of the general history of Europe. If by a "feudal system" is meant the state of things in Germany and Gaul—a state of things in which every great vassal became a rival to the king—William took direct care that no such "feudal system" should ever be introduced into his kingdom. But if by a "feudal system" is meant merely the holding of land by military tenure subject to the burthens of reliefs, wardships, marriage, and the like, though William certainly did not introduce such a "system" ready-made, yet the circumstances of his reign did much to promote the growth of that kind of tenure, and of the whole class of ideas connected with it. Such tendencies were already growing in England, and his coming strengthened them. Under him the doctrine that all land is a grant from the crown became a fact. . . . *The doctrine that a man was bound to follow his immediate lord had destroyed the royal*



*power in other lands. William, by making himself the immediate lord of all his subjects, turned that doctrine into the strongest support of his crown. . . .*

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Justice became more centralized in England than anywhere else. All the weightier causes came to be tried either in the king's own courts or by judges immediately commissioned by him. The local chiefs gave way to the king's representatives. . . . Teutonic notions of right and common sense were never wholly driven out.<sup>1</sup>

William thus began by asserting his claim to the obedience of every Englishman irrespective of rank or position. Apart from deliberate policy the Conquest had other features which helped to impose statehood on England. The dialects of Saxon spoken in various districts were so different as to require translation before they could be mutually understood. England was, therefore, at the Conquest, for practical purposes, a country of many tongues. The Normans, though Teutons by race, spoke French, and imposed it on the country as the official language, which, strange as it may seem, tended to unify England as a similar use of English itself is tending to unify India. That the Saxons should absorb their Teutonic invaders was inevitable. But the difference in language delayed the process, and held the Normans together long enough to act as a roller, and solidify the conquered race. Their temporary aloofness did for England what Crown Colony government has done for some of the Dominions.

Factors  
in the  
Norman  
Conquest  
making for  
unity.

As with their cousins in Germany, however, the disturbed conditions of the Continent had prevented the Normans from producing a law of their own.

Develop-  
ment of  
Saxon law  
under the  
Normans  
and Plan-  
tagenets.

<sup>1</sup> Freeman, 'History of England,' *Ency. Brit.* 10th ed. vol. viii. pp. 295, 296, 298, 299. The italics are not the author's. Later historians are disposed to minimise the importance of the Salisbury gathering and of the oath there administered. See Davis, *England under the Normans and Angevins*, p. 37.

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The English, on the other hand, were the one branch of the Teutonic race which had developed their native customs into a legal system, and this was adopted by William's son, Henry I., as the law of the land. But, as on the Continent, the Barons undertook to interpret and enforce the law, each for himself in his own manner, so that his vassals might regard him rather than the King as the dispenser of justice and source of authority. The weakness of Stephen had almost undone the work of William the Conqueror when Henry II. came to the throne and by means of his legal reforms placed it on a surer footing than ever. This he accomplished by establishing a system of Royal justice which was intrinsically better than that of the Barons. In questions affecting possession or the title of lands, he substituted trial by jury for the barbarous ordeal of battle which obtained in manorial courts. Justice was administered in his own court which was constantly on the move. But in order to bring his justice to the people's door, instead of waiting for them to come to his own, he sent his judges throughout the country, and in places they held no less than four assizes a year. He saw, moreover, that their judgments were duly enforced, and so popular did their jurisdiction become, that in 1305 the Northern counties, which always tended to stand aloof, petitioned the King for more frequent assizes. The King's justice won on its merits, and was sought in preference to that of the Barons. Henry II. thus established in the hearts of his people the principle initiated by his grandfather, that every Englishman should look to the King, and not as in Germany to some local princeling, as the sovereign authority to whom his allegiance was due. The native law of England flourished under his hand, and that English instead of Roman law is now being

administered at Melbourne, Vancouver, and San Francisco, is due to the obscure assizes of the first Plantagenet. Edward I. completed his work by making the King's writ run through every part of his realm but Ireland, that tragic exception to every phase in the growth of the English Commonwealth. The attitude which Englishmen developed towards their government is accurately expressed in the phrase 'Every subject's duty is the King's, but every subject's soul is his own.'<sup>1</sup> Throughout the Empire the terms 'King' or 'Crown' are now used as the legal equivalent of the 'State.' So modified, the formula is one which Socrates himself would have accepted as expressing his own relation to the commonwealth of Athens.

The result was that the primitive Teutonic idea, that every man has his value, flourished and grew to be one of the two great systems of civilized law. The notion, which Socrates held so strongly, that the ultimate obedience of the subject is due to law and not to any individual, was rapidly developed in the English mind, and 'the rule, predominance, or supremacy of law' became 'the distinguishing characteristic of English institutions.'<sup>2</sup> By the reign of Henry VI. it had become a maxim of the English courts that 'the law is the supreme inheritance of the King: for by the law he himself and all his subjects are governed, and without the law neither King nor inheritance would exist.'<sup>3</sup> And this maxim was no empty phrase. Time and again, kings like the Stuarts, parliaments like that which imprisoned Wilkes, or ministries like those which in recent years assumed the right to collect taxes before they were voted, have sought to ignore or evade it.<sup>4</sup> But

Develop-  
ment  
of the  
supremacy  
of law as  
the distin-  
guishing  
mark of  
British in-  
stitutions.

<sup>1</sup> *Henry I.*, Act iv. Sc. i.

<sup>2</sup> Dicey, *The Law of the Constitution*, p. 183.

<sup>3</sup> *Ibid.* p. 179.

<sup>4</sup> See Note B at end of this chapter, p. 121.

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in the end the supremacy of law has always been vindicated by the courts, and confirmed as the vital and distinguishing mark of British civilization. It is the corner-stone of the constitution upon which government throughout the Empire is based. It means in the first place that British subjects are ruled by laws and not by men. The law is above the ruler, and it is by virtue of the law alone that he rules. A British subject may be punished for breach of law but for nothing else. It means equality before the law, which is one and the same for all men. It 'excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens, or from the jurisdiction of the ordinary tribunals. . . . The notion which lies at the bottom of the "administrative law" known to foreign countries is, that affairs or disputes in which the government or its servants are concerned are beyond the sphere of the civil courts, and must be dealt with by special and more or less official bodies.'<sup>1</sup> The continental idea of administrative law is fundamentally at variance with English traditions and customs. .

The British Constitution itself the product of the supremacy of law. Importance of this idea in estimating the issues between England and Europe.

Dicey, in his work on the *Law of the Constitution* (from which the above quotations are made), goes on to point out that all the main principles of the British Constitution rest upon the supremacy of law. In a series of chapters he shows how personal freedom, the rights of discussion and of public meeting, the use of martial law, the rights and duties of the army, the collection and expenditure of public revenue, and the responsibility of ministers, are ultimately based on decisions of the ordinary courts of law.<sup>2</sup> 'An Englishman,' he remarks, 'naturally imagines that the rule of law (in the sense in which we are now using the term) is a trait common to all civilized

<sup>1</sup> Dicey, *The Law of the Constitution*, p. 198.

<sup>2</sup> *Ibid.* p. 199.

societies. But this supposition is erroneous. . . . It is even now far from universally true that in continental countries all persons are subject to one and the same law, or that the courts are supreme throughout the state.’<sup>1</sup> This failure to recognize the distinguishing feature of their own institutions which this author remarks in the mother country is, if anything, more noteworthy in the oversea Dominions, owing to their distance from the continent of Europe. And yet the issues in the long struggle between Britain and Europe for the control of the new continents opened by the labours of Henry the Navigator cannot be understood unless the significance of this principle is realized. Without it the place which the British Empire has filled in the world cannot possibly be grasped. The extract from the *Law of the Constitution* appended to this chapter is particularly instructive upon this point, but a study of the book itself will repay the labour of any reader who is not already acquainted with it.<sup>2</sup>

The common authority which the English were learning to obey was a body of principles, and not the will of an individual. At the same time they were acquiring the faculty, which the people of Athens had exercised through their ecclesia, of moulding those principles in accordance with their own experience. The function of changing old laws and of making new ones was, indeed, passing from the successors of William the Conqueror to the people themselves. From the point of view of the present inquiry this transfer of sovereignty had consequences which were all-important; and to understand these consequences it is necessary to see how the transfer was made.

Transfer of  
the power  
of chang-  
ing the  
law from  
the Crown  
to the  
people.

When the Saxon invaders settled on the lands

<sup>1</sup> Dicey, *The Law of the Constitution*, p. 190.

<sup>2</sup> See Note A at end of this chapter, p. 108.

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Primitive  
democracy  
in Saxon  
England  
and its  
effect on  
the  
Norman  
monarchy.

which they had won they retained and reproduced to a very large extent the primitive organization which Tacitus had encountered in Germany. A habit of consultation between the chief and the men of his tribe, was, as Tacitus shows, prescribed by the primitive customs of the race. In Saxon England this habit was widely recognized and obeyed. Government in the boroughs was conducted by an assembly of the inhabitants called the borough-moot, presided over by a reeve. The smallest unit of rural government was the township, and the freemen who cultivated the lands within the district assembled in the town-moot to conduct its local affairs. The next largest area was the hundred, a district supposed to contain a hundred families, the heads of which could meet to discuss their local affairs with the reeve. These were assemblies of a kind which the Americans would call primaries, and in principle resembled the ecclesia of Athens. Finally the local organization of England assumed approximately its modern form in the ninth and tenth centuries. The little kingdoms of the south, consolidated under the rule of Wessex, became units of local government, while the reconquest of the Danelaw by the House of Alfred further extended the division of the country into shires. The folk-moot of Tacitus, which decided questions of peace and war, is to be found in the shire-moot, presided over by the ealdorman, which was in theory an assembly of the freemen of the shire. While, during Saxon times, the democratic spirit of the Teutons declined before the encroachments of feudalism, it was of immense importance that the democratic forms remained. The representative system sprang directly from these ancient forms of local government, survivals of the Saxon conquest, which, when combined with the Norman institution of juries, prepared the way for

popular representation in a national assembly. The juries of inquest and assessment elaborated into a definite system by Henry II. were elected in these ancient courts and contained the germ of national representation. Great as was their importance from the purely legal point of view, their political importance was even greater. The reeve and four men who assessed their neighbours' property, and formed an elected committee with purely local duties, prepared the way for representatives of the electors with the task of assenting to or refusing the financial demands of the King. But while the folk-moots of the tribal age became the shire-moots of the Saxon Kingdom, the witanagemots, the assemblies of chiefs described by Tacitus, were absorbed into one body, attached to the person of the King. When Egbert consolidated the Heptarchy into one kingdom, his witan was no more than an aristocratic council of state which failed altogether to satisfy the national tradition of popular government. It failed, therefore, to give any real unity to England, and consequently it was upon a congeries of loosely connected communities that statehood was forcibly imposed by the sword of William the Conqueror. After his death the reviving power of the feudal lords led Henry I. to court an alliance with the people, in pursuance whereof he restored to them the Saxon laws. Their common danger was illustrated by the anarchy of the following reign, when Stephen proved too weak to curb the power of his nobles.

Thereafter, the restoration of the 'good laws of King Edward the Confessor' was the favourite promise of a new king, and in this way the Plantagenets followed the example of Henry I. in paying unconscious homage to the principle of government by assent. No vestige, however, of popular government had yet reappeared. The

Principle  
of repre-  
sentation.  
Its growth  
under the  
Planta-  
genets.

CHAP.  
II

Common Council was a purely feudal body, a gathering of nobles and bishops, the tenants in chief of the King. In 1215 it was ordained in Magna Carta that no new taxation should be imposed except by the Common Council of the realm, the constitution of which was defined. The nobles and bishops were to be personally summoned to it by the King, and the lesser tenants in chief by a general writ issued through the sheriff. But the crucial step was taken in the next reign when Simon de Montfort, supported by the towns, clergy, universities, and large numbers of the commonalty, overthrew the King at Lewes and proclaimed a new constitution. He summoned to the Common Council not only the nobles and the bishops, but also two burgesses from every town and two knights from every shire. Simon de Montfort was defeated and slain by Edward I. at the battle of Evesham. But the principles of the rebel earl survived him and prevailed over the victor himself, who in 1295 summoned to the 'model parliament' two burgesses from each city, borough, and leading town, and from every shire two knights, *chosen by the freeholders at the shire court.*

Importance  
of writ  
issued by  
Edward I.  
when  
summoning  
representa-  
tives to  
the model  
Parliament.

In the history of the Commonwealth there is no document of greater importance than the summons issued by Edward I. to the sheriff of Northamptonshire, which reads as follows: 'The King to the Sheriff of Northamptonshire. Since we intend to have a consultation and meeting with the earls, barons, and other principal men of our kingdom with regard to providing remedies against the dangers which are in these days threatening the same kingdom: and on that account have commanded them to be with us on the Lord's Day next after the feast of St. Martin in the approaching winter, at Westminster, to consider, ordain, and do as may be



necessary for the avoidance of these dangers: we strictly require you to cause two knights from the aforesaid county, two citizens from each city and two burgesses from each borough, of those who are especially discreet and capable of labouring, to be elected without delay, and cause them to come to us at the aforesaid time and place. *Moreover, the said knights are to have full and sufficient power for themselves and for the community of the aforesaid county, and the said citizens and burgesses for themselves and the communities of the aforesaid cities and boroughs separately, there and then, for doing what shall then be ordained according to the Common Council in the premises, so that the aforesaid business shall not remain unfinished in any way for defect of this power. And you shall have there the names of the knights, citizens, and burgesses, and this writ.'*

The document is one that bears on its face the stamp of a mind in touch with realities. Its author recognized that he was dealing with a people who must be identified with their own government before they could be prepared generously to contribute to its maintenance. For their ruler to meet and address them in accordance with ancient practice had long been impossible, and he called upon them, therefore, to send representatives, no more than could assemble in one place, to consider, assent to, or refuse the supplies which he deemed necessary for the public safety. But while bowing to the national instincts, he studiously insisted on the only condition by which they could be reconciled with the actual necessities of government, and warned his subjects that they must expect to be committed by their delegates no less than if they themselves had been present. The delegates were told in advance that they must come prepared, not only to discuss the

True meaning of representation and its consequent effect on development of the commonwealth.

## CHAP.

## II

affairs of the realm, but to settle them; and further, that they must regard themselves and their constituents as bound by the settlement. For they and their electors were from first to last one, and there could in the end be but one government for them all. This indeed was the final condition of statehood, the only foundation upon which the commonwealth could rest.

Edward I. was no politician versed in the art of evading or veiling issues, but a statesman who went out to meet them. The plenary power of the deputy to commit his constituents is the essence of representation, and it was in this that the Parliaments henceforward established in England differed from the Synod of Delos and the Diet of the Holy Roman Empire. An idea had been realized in the machinery of an actual government which made it possible, even in that rude age, for a community, vastly too great to listen to the voice of a single orator, to formulate the general will in terms precise enough to become the actuating principle of its government.

Assertion  
by Parlia-  
ment of its  
exclusive  
right to  
alter the  
law.

No sooner was Parliament assembled than the inhabitants of the towns and counties began to use the burgesses and knights they had sent to it, as vehicles for petitions to the King, asking for the removal of abuses, and also demanding changes in the law. Before granting supplies required by the King, Parliament adopted the habit of awaiting his reply to such petitions until he was pledged to administrative and legal reforms demanded by public opinion. In 1322 a statute was issued by the King declaring that 'the matters to be established for the estate of the King and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament, by the King, and by the assent of the prelates, earls, and barons, and the community of the realm, according as had been before

accustomed.' A further step was taken when, in 1327, Edward II. was deposed, and Parliament assumed the right of appointing his son, Edward III., to reign in his place. Whenever his successors might claim, as they afterwards did, to rest their authority on divine right, the English people could henceforward point to a monarch whose right to reign was founded expressly on the popular will. In the reign of Edward III. it came to be recognized that no alteration in the law was to be made by the King on his own authority and without the consent of Parliament.

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II

The exclusive right of the people to alter the law was thus established in principle. But as Dicey shows it was characteristic of the English to place but little value on principles until they had secured a machinery for giving effect to them in practice. To begin with, the Parliaments were content to vote supplies as soon as the King had assented to their petitions, leaving it to him to give effect to his promises. When the King had agreed to change the laws or make new ones, statutes were framed by the judges and enrolled by his authority after the Parliament had been prorogued. But it was often found that the new statutes differed in material respects from the petitions of Parliament actually granted by the King. Henry V. promised 'that nothing should be enacted to the petitions of the commons, contrary to their asking, whereby they should be bound without their assent.' But so long as the actual statute was not framed until Parliament had been prorogued there could be no security against abuse. In the reign of Henry VI. Parliament therefore adopted the plan of attaching to their petition a draft of the law which they desired the King to enact. This draft or bill became the subject of discussion in Parliament before it was submitted to the King, and in these dis-

How this  
right was  
rendered  
effective.

CHAP.  
II

cussions was developed a method of translating public opinion into law which has become the basis of parliamentary procedure throughout the civilized world. Since the reign of Queen Anne no sovereign has ventured to withhold assent from any bill presented by Parliament, so that the power of altering the law has finally passed from the Crown to the representatives of the people. With the single exception of the veto this transfer of sovereignty had been effected in principle by the reign of Henry VI. In the fifteenth century, however, Parliamentary government had outgrown its strength. It had succeeded in weakening the authority of the crown without being strong enough to replace it with the authority of Parliament. A new feudalism arose, more dangerous than any other that had hitherto subsisted in England. Constitutional development was summarily checked by the Wars of the Roses, a series of dreary dynastic struggles lasting nearly to the close of the century. When Henry VII. won the Crown on Bosworth field he was faced with a position not dissimilar from that with which Henry II. had had to cope more than three centuries before. The popular despotism of the Tudors was the prelude to the constitutional development which took place under the Stuarts, and which drew its inspiration very largely from the precedents set by the earlier movement which began with de Montfort's Parliament and ended with the fall of Henry VI. The victory of Parliament in the Great Rebellion was followed by a military dictatorship, but neither that nor the Restoration of Charles II. could obliterate the lessons which had been learnt in the school of Hampden and Pym. With the expulsion of James II. from the kingdom the throne was established once more on a parliamentary title, and the doctrine of divine right revived by the Tudors and Stuarts received its final

death-blow.<sup>1</sup> Lord John Russell, when asked by Queen Victoria whether he did not believe in that doctrine, was able to reply, 'As a loyal supporter of the House of Hanover I am obliged to tell your Majesty that I do not.'

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II

The exclusive right of altering the law was thus transferred, step by step, from the Crown to the representatives of the people. But even when Parliament had asserted the right to frame the very words in which new laws were enacted, it still found that the control which it exercised over national affairs was extremely limited, so long as the duty of executing the law remained with the King. Laws, especially those granting money (and they are the most important laws of all) can at best declare the will of the community in general terms. Without any violation of their letter such laws may be executed in different ways, and different policies may be involved in their execution, according to the disposition of the executive entrusted with the task. It was only in the nature of things that the policy of the King should at times differ from that which Parliament or the nation would have preferred, and in such cases the only remedy open to Parliament was to refuse to vote supplies until their wishes were observed. But a control which can only be exercised by paralysing government is a precarious control. It does not follow that a ship will stay where it is if the stokers refuse to shovel the coal until the navigating officer has agreed to steer the course they desire; for while the controversy is proceeding the ship may drift on the rocks. If some such system has so far worked in the United States it is merely because it happens to be far removed from hostile shores.

Difficulties  
arising  
from Par-  
liament's  
lack of  
power to  
control  
execution  
of the laws  
it made.

It was in order to solve this difficulty that the Crown attempted in the seventeenth and eighteenth

<sup>1</sup> See Note D at the end of Chapter I.

CHAP.  
II

Transfer  
from  
Crown to  
Parlia-  
ment of  
executive  
control.

centuries to recover control of the legislature, partly by packing the House of Commons with its own nominees, and partly by buying the votes of its members. Rotten boroughs, or sham constituencies, in which the electors were so few as to be amenable to the influence of the Crown, were created. Patronage and money were freely used to influence votes in Parliament itself. These practices were gradually stopped by a series of reforms which removed the members from the influence of the Crown, and rendered them more accountable to the constituencies which elected them. But the solution of the problem was only reached when the sovereign ceased to discharge the functions of the executive, and transferred them to the minister who, for the time being, was regarded as their leader by the majority in the House of Commons. Thus at last the organ of the general will was able not only to make the laws, but to determine the manner of their execution, and the constitutional conflict was ended. The sovereign, however, retained an all-important function. He still held the power of attorney for the Commonwealth, by means of which, in the last resort, the nation could be enabled to declare whether a parliament or government were rightly interpreting its will. The prerogative of the Crown had, as Dicey declares, become the privileges of the people, and sovereignty had passed from the monarch to a popular assembly. The monarch had, in fact, become the hereditary president of a republic, and whatever her private views may have been on the subject of divine right, the momentous change was finally consummated by the tact and statesmanship of Queen Victoria herself. No president holding office by the votes of a dominant party could ever identify himself so completely with the nation as the monarchy has done since Queen Victoria ascended the throne.

Edward I. can scarcely have realized when he issued his famous writ that he, a powerful despot, was laying the foundation of commonwealths greater than the ancients had ever conceived. By the device of representation the principle of government based on the experience of the governed was destined to be rendered applicable to states more populous than the Roman Empire. But even so its extension depended on gradual improvements in physical means of communication; and it was not perhaps till the last half century that it became possible for the principle of the commonwealth to be applied to territories so large as those of Australia, Canada, or the present area of the United States.

CHAP.  
II

With each improvement in communications larger commonwealths became possible.

In the Middle Ages constituencies evaded the writs whenever they could, and knights and burgesses made pathetic attempts to avoid election. To collect in one place representatives from every part of a country no larger than England was in that rude age a bold idea, and, no doubt, contemporary wiseacres argued that because it was novel and difficult, it was therefore impossible. The event proved otherwise; but if Edward had summoned representatives from his oversea dominions to meet him at Westminster, the experiment must almost certainly have failed.

Edward I. forced to exclude the colonies from the English Parliament.

The words 'oversea dominions' suggest the remark that the age of colonization did not begin three hundred years later, in the reign of Queen Elizabeth, but had already begun in the reign of Henry II., some four centuries and a half before Virginia was planted. When Edward I. summoned the model Parliament in 1295, the English had actually been conquering and founding colonies in Ireland for more than a century. But though the Plantagenets claimed sovereignty over the whole island, their rule had never been extended beyond the English colonies, which clustered round the ports, to the natives themselves.

A separate Parliament granted to the English colonies in Ireland.

CHAP.  
II

Their actual authority over Ireland was indeed scarcely greater than that exercised by James I. over North America. The Irish Channel was then more dangerous and difficult to cross than the Atlantic to-day, and instead of calling upon the colonists to send representatives to Westminster, Edward I. instructed his Viceroy to convene a separate parliament at Dublin. At the very outset, the fissiparous tendency, which prevented the creation of a national state in Greece, imposed itself on the man who must rank as the founder of the national commonwealth in the modern world.

NOTE A

See page  
97.

By special leave of the distinguished author, which is here gratefully acknowledged, Chapter IV. of *The Law of the Constitution*, by Prof. A. V. Dicey, together with its notes and references, is appended in full.

THE RULE OF LAW: ITS NATURE AND GENERAL  
APPLICATION

The Rule  
of Law.

Two features have at all times since the Norman Conquest characterized the political institutions of England.

The first of these features is the omnipotence or undisputed supremacy throughout the whole country of the central government. This authority of the state or the nation was during the earlier periods of our history represented by the power of the Crown. The King was the source of law and the maintainer of order. The maxim of the Courts, *tout fuit in luy et vient de lui al commencement*,<sup>1</sup> was originally the expression of an actual and undoubted fact. This royal supremacy has now passed into that sovereignty of Parliament which has formed the main subject of the foregoing chapters.<sup>2</sup>

The second of these features, which is closely connected with the first, is the rule or supremacy of law. This peculiarity of our polity is well expressed in the old saw of the Courts, '*La ley est la plus haute inheritance, que le roy ad ; car par la ley il même et tous ses sujets sont rulés, et si la ley ne fuit, nul roi, et nul inheritance sera.*'<sup>3</sup>

<sup>1</sup> Year Books, xxiv. Edward III. ; cited Gneist, *Englische Verwaltungsrecht*, i. p. 454.

<sup>2</sup> See Part I.

<sup>3</sup> Year Books, xix. Henry VI., cited Gneist, *Englische Verwaltungsrecht*, i. p. 455.



This supremacy of the law, or the security given under the English constitution to the rights of individuals looked at from various points of view, forms the subject of this part of this treatise.

Foreign observers of English manners, such for example as Voltaire, De Lolme, Tocqueville, or Gneist, have been far more struck than have Englishmen themselves with the fact that England is a country governed, as is scarcely any other part of Europe, under the rule of law; and admiration or astonishment at the legality of English habits and feeling is nowhere better expressed than in a curious passage from Tocqueville's writings, which compares the Switzerland and the England of 1836 in respect of the spirit which pervades their laws and manners.

The rule of law in England noticed by foreign observers.

'I am not about,' he writes, 'to compare Switzerland<sup>1</sup> with the United States, but with Great Britain. When you examine the two countries, or even if you only pass through them, you perceive, in my judgment, the most astonishing differences between them. Take it all in all, England seems to be much more republican than the Helvetic Republic. The principal differences are found in the institutions of the two countries, and especially in their customs (*mœurs*).

Tocqueville on the want of respect for law in Switzerland and contrast with England.

'1. In almost all the Swiss Cantons liberty of the press is a very recent thing.

'2. In almost all of them individual liberty is by no means completely guaranteed, and a man may be arrested administratively and detained in prison without much formality.

'3. The Courts have not, generally speaking, a perfectly independent position.

'4. In all the Cantons trial by jury is unknown.

'5. In several Cantons the people were thirty-eight years ago entirely without political rights. Aargau, Thurgau, Tessin, Vaud, and parts of the Cantons of Zurich and Berne were in this condition.

'The preceding observations apply even more strongly to customs than to institutions.

'i. In many of the Swiss Cantons the majority of the citizens are quite without taste or desire for *self-government*, and have not acquired the habit of it. In any crisis they interest themselves about their affairs, but you never see in them the thirst for political rights and the craving to take part in public affairs which seem to torment Englishmen throughout their lives.

'ii. The Swiss abuse the liberty of the press on account of its being a recent form of liberty, and Swiss newspapers are much more *revolutionary* and much less *practical* than English newspapers.

<sup>1</sup> Many of Tocqueville's remarks are not applicable to the Switzerland of 1902: they refer to a period before the creation in 1848 of the Swiss Federal Constitution.

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II

‘iii. The Swiss seem still to look upon associations from much the same point of view as the French, that is to say, they consider them as a means of revolution, and not as a slow and sure method for obtaining redress of wrongs. The art of associating and of making use of the right of association is but little understood in Switzerland.

‘iv. The Swiss do not show the love of justice which is such a strong characteristic of the English. Their Courts have no place in the political arrangements of the country, and exert no influence on public opinion. The love of justice, the peaceful and legal introduction of the judge into the domain of politics, are perhaps the most standing characteristics of a free people.

‘v. Finally, and this really embraces all the rest, the Swiss do not show at bottom that respect for justice, that love of law, that dislike of using force, without which no free nation can exist, which strikes strangers so forcibly in England.

‘I sum up these impressions in a few words.

‘Whoever travels in the United States is involuntarily and instinctively so impressed with the fact that the spirit of liberty and the taste for it have pervaded all the habits of the American people, that he cannot conceive of them under any but a Republican government. In the same way it is impossible to think of the English as living under any but a free government. But if violence were to destroy the Republican institutions in most of the Swiss Cantons, it would be by no means certain that after rather a short state of transition the people would not grow accustomed to the loss of liberty. In the United States and in England there seems to be more liberty in the customs than in the laws of the people. In Switzerland there seems to be more liberty in the laws than in the customs of the country.’<sup>1</sup>

Bearing of  
Tocqueville's  
remarks  
on mean-  
ing of rule  
of law.

Tocqueville's language has a twofold bearing on our present topic. His words point in the clearest manner to the rule, predominance, or supremacy of law as the distinguishing characteristic of English institutions. They further direct attention to the extreme vagueness of a trait of national character which is as noticeable as it is hard to portray. Tocqueville, we see, is clearly perplexed how to define a feature of English manners of which he at once recognizes the existence; he mingles or confuses together the habit of self-government, the love of order, the respect for justice and a legal turn of mind. All these sentiments are intimately allied, but they cannot without confusion be identified with each other. If, however, a critic as acute as Tocqueville found a difficulty in describing one of the most marked peculiarities of English life, we may safely conclude that we ourselves, whenever we talk of Englishmen as loving the government of law, or of the supremacy of law as being a characteristic of the English constitution, are using words

<sup>1</sup> See Tocqueville, *Œuvres complètes*, viii. pp. 455-457.

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II

which, though they possess a real significance, are nevertheless to most persons who employ them full of vagueness and ambiguity. If therefore we are ever to appreciate the full import of the idea denoted by the term 'rule, supremacy, or predominance of law,' we must first determine precisely what we mean by such expressions when we apply them to the British constitution.

When we say that the supremacy or the rule of law is a characteristic of the English constitution, we generally include under one expression at least three distinct though kindred conceptions.

We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint.

Modern Englishmen may at first feel some surprise that the 'rule of law' (in the sense in which we are now using the term) should be considered as in any way a peculiarity of English institutions, since, at the present day, it may seem to be not so much the property of any one nation as a trait common to every civilized and orderly state. Yet, even if we confine our observation to the existing condition of Europe, we shall soon be convinced that the 'rule of law' even in this narrow sense is peculiar to England, or to those countries which, like the United States of America, have inherited English traditions. In almost every continental community the executive exercises far wider discretionary authority in the matter of arrest, of temporary imprisonment, of expulsion from its territory, and the like, than is either legally claimed or in fact exerted by the government in England; and a study of European politics now and again reminds English readers that wherever there is discretion there is room for arbitrariness, and that in a republic no less than under a monarchy discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects.

If, however, we confined our observation to the Europe of the twentieth century, we might well say that in most European countries the rule of law is now nearly as well established as in England, and that private individuals at any rate who do not meddle in politics have little to fear, as long as they keep the law, either from the Government or from any one else; and we might therefore feel some difficulty in understanding how it ever happened that to foreigners the absence of arbitrary power on the part of the Crown, of the executive, and of every other authority in England, has always seemed a striking feature, we

Three meanings of rule of law.

Absence of arbitrary power on part of the government.

Contrast between England and the Continent at present day.

CHAP.  
II

Contrast  
between  
England  
and Con-  
tinent  
during  
eighteenth  
century.

might almost say the essential characteristic, of the English constitution.<sup>1</sup>

Our perplexity is entirely removed by carrying back our minds to the time when the English constitution began to be criticized and admired by foreign thinkers. During the eighteenth century many of the continental governments were far from oppressive, but there was no continental country where men were secure from arbitrary power. The singularity of England was not so much the goodness or the leniency as the legality of the English system of government. When Voltaire came to England—and Voltaire represented the feeling of his age—his predominant sentiment clearly was that he had passed out of the realm of despotism to a land where the laws might be harsh, but where men were ruled by law and not by caprice.<sup>2</sup> He had good reason to know the difference. In 1717 Voltaire was sent to the Bastille for a poem which he had not written, of which he did not know the author, and with the sentiment of which he did not agree. What adds to the oddity, in English eyes, of the whole transaction is that the Regent treated the affair as a sort of joke, and, so to speak, 'chaffed' the supposed author of the satire '*I have seen*' on being about to pay a visit to a prison which he 'had not seen.'<sup>3</sup> In 1725 Voltaire, then the literary hero of his country, was lured off from the table of a Duke, and was thrashed by lackeys in the presence of their noble master; he was unable to obtain either legal or honourable redress, and because he complained of this outrage, paid a second visit to the Bastille. This indeed was the last time in which he was lodged within the walls of a French gaol, but his whole life was a series of contests with arbitrary power, and nothing but his fame, his deftness, his infinite resource, and ultimately his wealth, saved him from penalties far more severe than temporary imprisonment. Moreover, the price at which Voltaire saved his property and his life was after all exile from France. Whoever wants to see how exceptional a phenomenon was that supremacy

<sup>1</sup> 'La liberté est le droit de faire tout ce que les lois permettent; et si un citoyen pouvoit faire ce qu'elles défendent, il n'auroit plus de liberté, parce que les autres auroient tout de même ce pouvoir.'—Montesquieu, *De l'esprit des lois*, livre XI. chap. iii.

∴ 'Il y a aussi une nation dans le monde qui a pour objet direct de sa constitution la liberté politique.'—*Ibid.* chap. v. The English are this nation.

<sup>2</sup> 'Les circonstances qui contraignaient Voltaire à chercher un refuge chez nos voisins devaient lui inspirer une grande sympathie pour des institutions où il n'y avait nulle place à l'arbitraire. "La raison est libre ici et n'y connaît point de contrainte." On y respire un air plus généreux, l'on se sent au milieu de citoyens qui n'ont pas tort de porter le front haut, de marcher fièrement, sûrs qu'on n'eût pu toucher à un seul cheveu de leur tête, et n'ayant à redoubter ni lettres de cachet, ni captivité immotivée.'—Desnoiresterres, *Voltaire*, i. p. 365.

<sup>3</sup> Desnoiresterres, i. pp. 344-364.

of law which existed in England during the eighteenth century should read such a book as Morley's *Life of Diderot*. The effort lasting for twenty-two years to get the *Encyclopédie* published was a struggle on the part of all the distinguished literary men in France to obtain utterance for their thoughts. It is hard to say whether the difficulties or the success of the contest bear the strongest witness to the wayward arbitrariness of the French Government.

Royal lawlessness was not peculiar to specially detestable monarchs such as Louis the Fifteenth: it was inherent in the French system of administration. An idea prevails that Louis the Sixteenth at least was not an arbitrary, as he assuredly was not a cruel ruler. But it is an error to suppose that up to 1789 anything like the supremacy of law existed under the French monarchy. The folly, the grievances, and the mystery of the Chevalier D'Eon made as much noise little more than a century ago as the imposture of the Claimant in our own day. The memory of these things is not in itself worth reviving. What does deserve to be kept in remembrance is that in 1778, in the days of Johnson, of Adam Smith, of Gibbon, of Cowper, of Burke, and of Mansfield, during the continuance of the American war and within eleven years of the assembling of the States General, a brave officer and a distinguished diplomatist could for some offence still unknown, without trial and without conviction, be condemned to undergo a penance and disgrace which could hardly be rivalled by the fanciful caprice of the torments inflicted by Oriental despotism.<sup>1</sup>

Nor let it be imagined that during the latter part of the eighteenth century the government of France was more arbitrary than that of other countries. To entertain such a supposition is to misconceive utterly the condition of the Continent. In France, law and public opinion counted for a great deal more than in Spain, in the petty States of Italy, or in the Principalities of Germany. All the evils of despotism which attracted the notice of the world in a great kingdom such as France existed under worse forms in countries where, just because the evil was so much greater, it attracted the less attention. The power of the French monarch was criticized more severely than the lawlessness of a score of petty tyrants, not because the French King ruled more despotically than other crowned heads, but because the French people appeared from the eminence of the nation to have a special claim to freedom, and because the ancient kingdom of France was the typical representative of despotism. This explains the thrill of enthusiasm with which

<sup>1</sup> It is worth notice that even after the meeting of the States General the King was apparently reluctant to give up altogether the powers exercised by *lettres de cachet*. See 'Déclaration des intentions du Roi,' art. 15, Plouard, *Les Constitutions françaises*, p. 10.

## CHAP.

## II

Every man  
subject to  
ordinary  
law ad-  
ministered  
by  
ordinary  
tribunals.

all Europe greeted the fall of the Bastille. When the fortress was taken, there were not ten prisoners within its walls; at that very moment hundreds of debtors languished in English gaols. Yet all England hailed the triumph of the French populace with a fervour which to Englishmen of the twentieth century is at first sight hardly comprehensible. Reflection makes clear enough the cause of a feeling which spread through the length and breadth of the civilized world. The Bastille was the outward and visible sign of lawless power. Its fall was felt, and felt truly, to herald in for the rest of Europe that rule of law which already existed in England.<sup>1</sup>

We mean in the second place,<sup>2</sup> when we speak of the 'rule of law' as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.

In England the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary Courts, has been pushed to its utmost limit. With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the Courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor,<sup>3</sup> a secretary of state,<sup>4</sup> a military officer,<sup>5</sup> and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person. Officials, such for example as soldiers,<sup>6</sup> or clergymen of the

<sup>1</sup> For English sentiment with reference to the servitude of the French see Goldsmith, *Citizen of the World*, iii. Letter iv.; and see *ibid.*, Letter xxxvii. p. 143, for a contrast between the execution of Lord Ferrers and the impunity with which a French nobleman was allowed to commit murder because of his relationship to the Royal family; and for the general state of feeling throughout Europe, Tocqueville, *Œuvres complètes*, viii. pp. 57-72. The idea of the rule of law in this sense implies, or is at any rate closely connected with, the absence of any dispensing power on the part either of the Crown or its servants. See Bill of Rights, Preamble 1, Stubbs, *Select Charters* (2nd ed.), p. 523. Compare *Miller v. Knox*, 6 Scott, 1; *Attorney-General v. Kissane*, 32 L.R. Ir. 220.

<sup>2</sup> For first meaning see p. 183, *ante*.

<sup>3</sup> *Mostyn v. Fabregas*, Cowp. 161; *Musgrave v. Pulido*, 5 App. Cas. 102; *Governor Wall's Case*, 28 St. Tr. 51.

<sup>4</sup> *Entick v. Carrington*, 19 St. Tr. 1030.

<sup>5</sup> *Phillips v. Eyre*, L.R., 4 Q.B. 225.

<sup>6</sup> As to the legal position of soldiers see chaps. viii. and ix. *post*.

Established Church, are, it is true, in England as elsewhere, subject to laws which do not affect the rest of the nation, and are in some instances amenable to tribunals which have no jurisdiction over their fellow-countrymen; officials, that is to say, are to a certain extent governed under what may be termed official law. But this fact is in no way inconsistent with the principle that all men are in England subject to the law of the realm; for though a soldier or a clergyman incurs from his position legal liabilities from which other men are exempt, he does not (speaking generally) escape thereby from the duties of an ordinary citizen.

An Englishman naturally imagines that the rule of law (in the sense in which we are now using the term) is a trait common to all civilized societies. But this supposition is erroneous. Most European nations had indeed, by the end of the eighteenth century, passed through that stage of development (from which England emerged before the end of the sixteenth century) when nobles, priests and others could defy the law. But it is even now far from universally true that in continental countries all persons are subject to one and the same law, or that the Courts are supreme throughout the state. If we take France as the type of a continental state, we may assert, with substantial accuracy, that officials—under which word should be included all persons employed in the service of the state—are, or have been, in their official capacity, to some extent exempted from the ordinary law of the land, protected from the jurisdiction of the ordinary tribunals, and subject in certain respects only to official law administered by official bodies.<sup>1</sup>

Contrast  
in this  
respect  
between  
England  
and  
France.

There remains yet a third and a different sense in which the 'rule of law' or the predominance of the legal spirit may be described as a special attribute of English institutions. We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts;<sup>2</sup> whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution.

General  
rules of  
constitu-  
tional  
law are  
result of  
ordinary  
law of  
the land.

This is one portion at least of the fact vaguely hinted at in the current but misleading statement that 'the constitution

<sup>1</sup> See chap. xii. as to the contrast between the rule of law and foreign administrative law.

<sup>2</sup> Compare *Calvin's Case*, 7 Coke, Rep. 1; *Campbell v. Hall*, Cowp. 204; *Wilkes v. Wood*, 19 St. Tr. 1153; *Mostyn v. Fabrigas*, Cowp. 161. Parliamentary declarations of the law such as the Petition of Right and the Bill of Rights have a certain affinity to judicial decisions.

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II

has not been made but has grown.' This dictum, if taken literally, is absurd. 'Political institutions (however the proposition may be at times ignored) are the work of men, owe their origin and their whole existence to human will. Men did not wake up on a summer morning and find them sprung up. Neither do they resemble trees, which, once planted, are "aye growing" while men "are sleeping." In every stage of their existence they are made what they are by human voluntary agency.'<sup>1</sup>

Yet, though this is so, the dogma that the form of a government is a sort of spontaneous growth so closely bound up with the life of a people that we can hardly treat it as a product of human will and energy, does, though in a loose and inaccurate fashion, bring into view the fact that some polities, and among them the English constitution, have not been created at one stroke, and, far from being the result of legislation, in the ordinary sense of that term, are the fruit of contests carried on in the Courts on behalf of the rights of individuals. Our constitution, in short, is a judge-made constitution, and it bears on its face all the features, good and bad, of judge-made law.

Hence flow noteworthy distinctions between the constitution of England and the constitutions of most foreign countries.

Contrast  
between  
the  
English  
constitu-  
tion and  
Foreign  
constitu-  
tions.

There is in the English constitution an absence of those declarations or definitions of rights so dear to foreign constitutionalists. Such principles, moreover, as you can discover in the English constitution are, like all maxims established by judicial legislation, mere generalizations drawn either from the decisions or dicta of judges, or from statutes which, being passed to meet special grievances, bear a close resemblance to judicial decisions, and are in effect judgments pronounced by the High Court of Parliament. To put what is really the same thing in a somewhat different shape, the relation of the rights of individuals to the principles of the constitution is not quite the same in countries like Belgium, where the constitution is the result of a legislative act, as it is in England, where the constitution itself is based upon legal decisions. In Belgium, which may be taken as a type of countries possessing a constitution formed by a deliberate act of legislation, you may say with truth that the rights of individuals to personal liberty flow from or are secured by the constitution. In England the right to individual liberty is part of the constitution, because it is secured by the decisions of the Courts, extended or confirmed as they are by the *Habeas Corpus* Acts. If it be allowable to apply the formulas of logic to questions of law, the difference in this matter between the constitution of Belgium and the English constitution may be described by the statement that in Belgium individual rights are deductions drawn from the

<sup>1</sup> Mill, *Representative Government*, p. 4.



principles of the constitution, whilst in England the so-called principles of the constitution are inductions or generalizations based upon particular decisions pronounced by the Courts as to the rights of given individuals.

This is of course a merely formal difference. Liberty is as well secured in Belgium as in England, and as long as this is so it matters nothing whether we say that individuals are free from all risk of arbitrary arrest, because liberty of person is guaranteed by the constitution, or that the right to personal freedom, or in other words to protection from arbitrary arrest, forms part of the constitution because it is secured by the ordinary law of the land. But though this merely formal distinction is in itself of no moment, provided always that the rights of individuals are really secure, the question whether the right to personal freedom or the right to freedom of worship is likely to be secure does depend a good deal upon the answer to the inquiry whether the persons who consciously or unconsciously build up the constitution of their country begin with definitions or declarations of rights, or with the contrivance of remedies by which rights may be enforced or secured. Now, most foreign constitution-makers have begun with declarations of rights. For this they have often been in nowise to blame. Their course of action has more often than not been forced upon them by the stress of circumstances, and by the consideration that to lay down general principles of law is the proper and natural function of legislators. But any knowledge of history suffices to show that foreign constitutionalists have, while occupied in defining rights, given insufficient attention to the absolute necessity for the provision of adequate remedies by which the rights they proclaimed might be enforced. The Constitution of 1791 proclaimed liberty of conscience, liberty of the press, the right of public meeting, the responsibility of government officials.<sup>1</sup> But there never was a period in the recorded annals of mankind when each and all of these rights were so insecure, one might almost say so completely non-existent, as at the height of the French Revolution. And an observer may well doubt whether a good number of these liberties or rights are even now so well protected under the French Republic as under the English Monarchy. On the other hand, there runs through the English constitution that inseparable connection between the means of enforcing a right and the right to be enforced which is the strength of judicial legislation. The saw, *ubi jus ibi remedium*, becomes from this point of view something much more important than a mere tautologous proposition. In its bearing upon constitutional law, it means that the Englishmen whose labours gradually framed the complicated set of laws and institutions which we call the Constitution, fixed

<sup>1</sup> See Plouard, *Les Constitutions françaises*, pp. 14-16; Duguit and Monnier, *Les Constitutions de la France* (2nd ed.), pp. 4, 5.

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their minds far more intently on providing remedies for the enforcement of particular rights or (what is merely the same thing looked at from the other side) for averting definite wrongs, than upon any declaration of the Rights of Man or of Englishmen. The *Habeas Corpus* Acts declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty. Nor let it be supposed that this connection between rights and remedies which depends upon the spirit of law pervading English institutions is inconsistent with the existence of a written constitution, or even with the existence of constitutional declarations of rights. The Constitution of the United States and the constitutions of the separate States are embodied in written or printed documents, and contain declarations of rights.<sup>1</sup> But the statesmen of America have shown unrivalled skill in providing means for giving legal security to the rights declared by American constitutions. The rule of law is as marked a feature of the United States as of England.

The fact, again, that in many foreign countries the rights of individuals, *e.g.* to personal freedom, depend upon the constitution, whilst in England the law of the constitution is little else than a generalization of the rights which the Courts secure to individuals, has this important result. The general rights guaranteed by the constitution may be, and in foreign countries constantly are, suspended. They are something extraneous to and independent of the ordinary course of the law. The declaration of the Belgian constitution, that individual liberty is 'guaranteed,' betrays a way of looking at the rights of individuals very different from the way in which such rights are regarded by English lawyers. We can hardly say that one right is more guaranteed than another. Freedom from arbitrary

<sup>1</sup> The Petition of Right, and the Bill of Rights, as also the American Declarations of Rights, contain, it may be said, proclamations of general principles which resemble the declarations of rights known to foreign constitutionalists, and especially the celebrated Declaration of the Rights of Man (*Déclaration des Droits de l'Homme et du Citoyen*) of 1789. But the English and American Declarations on the one hand, and foreign declarations of rights on the other, though bearing an apparent resemblance to each other, are at bottom remarkable rather by way of contrast than of similarity. The Petition of Right and the Bill of Rights are not so much 'declarations of rights' in the foreign sense of the term, as judicial condemnations of claims or practices on the part of the Crown, which are thereby pronounced illegal. It will be found that every, or nearly every, clause in the two celebrated documents negatives some distinct claim made and put into force on behalf of the prerogative. No doubt the Declarations contained in the American Constitutions have a real similarity to the continental declarations of rights. They are the product of eighteenth-century ideas; they have, however, it is submitted, the distinct purpose of legally controlling the action of the legislature by the Articles of the Constitution.

arrest, the right to express one's opinion on all matters subject to the liability to pay compensation for libellous or to suffer punishment for seditious or blasphemous statements, and the right to enjoy one's own property, seem to Englishmen all to rest upon the same basis, namely, on the law of the land. To say that the 'constitution guaranteed' one class of rights more than the other would be to an Englishman an unnatural or a senseless form of speech. In the Belgian constitution the words have a definite meaning. They imply that no law invading personal freedom can be passed without a modification of the constitution made in the special way in which alone the constitution can be legally changed or amended. This, however, is not the point to which our immediate attention should be directed. The matter to be noted is, that where the right to individual freedom is a result deduced from the principles of the constitution, the idea readily occurs that the right is capable of being suspended or taken away. Where, on the other hand, the right to individual freedom is part of the constitution because it is inherent in the ordinary law of the land, the right is one which can hardly be destroyed without a thorough revolution in the institutions and manners of the nation. The so-called 'suspension of the *Habeas Corpus* Act' bears, it is true, a certain similarity to what is called in foreign countries 'suspending the constitutional guarantees.' But, after all, a statute suspending the *Habeas Corpus* Act falls very far short of what its popular name seems to imply; and though a serious measure enough, is not, in reality, more than a suspension of one particular remedy for the protection of personal freedom. The *Habeas Corpus* Act may be suspended and yet Englishmen may enjoy almost all the rights of citizens. The constitution being based on the rule of law, the suspension of the constitution, as far as such a thing can be conceived possible, would mean with us nothing less than a revolution.

That 'rule of law,' then, which forms a fundamental principle of the constitution, has three meanings, or may be regarded from three different points of view.

It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else.

It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts; the 'rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals; there can

Summary  
of  
meanings  
of Rule  
of Law.

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II

be with us nothing really corresponding to the 'administrative law' (*droit administratif*) or the 'administrative tribunals' (*tribunaux administratifs*) of France.<sup>1</sup> The notion which lies at the bottom of the 'administrative law' known to foreign countries is, that affairs or disputes in which the government or its servants are concerned are beyond the sphere of the civil Courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs.

The 'rule of law,' lastly, may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the Courts; that, in short, the principles of private law have with us been by the action of the Courts and Parliament so extended as to determine the position of the Crown and of its servants; thus the constitution is the result of the ordinary law of the land.

Influence  
of 'Rule of  
Law' on  
leading  
provisions  
of con-  
stitution.

General propositions, however, as to the nature of the rule of law carry us but a very little way. If we want to understand what that principle in all its different aspects and developments really means, we must try to trace its influence throughout some of the main provisions of the constitution. The best mode of doing this is to examine with care the manner in which the law of England deals with the following topics, namely, the right to personal freedom;<sup>2</sup> the right to freedom of discussion;<sup>3</sup> the right of public meeting;<sup>4</sup> the use of martial law;<sup>5</sup> the rights and duties of the army;<sup>6</sup> the collection and expenditure of the public revenue;<sup>7</sup> and the responsibility of Ministers.<sup>8</sup> The true nature, further, of the rule of law as it exists in England will be illustrated by contrast with the idea of *droit administratif*, or administrative law, which prevails in many continental countries.<sup>9</sup> These topics will each be treated of in their due order. The object, however, of this treatise, as the reader should remember, is not to provide minute and full information, *e.g.* as to the *Habeas Corpus* Acts, or other enactments protecting the liberty of the subject; but simply to show that these leading heads of constitutional law, which have been enumerated, these 'articles,' so to speak, of the constitution, are both governed by, and afford illustrations of, the supremacy throughout English institutions of the law of

<sup>1</sup> See chap. xii.

<sup>4</sup> Chap. vii.

<sup>7</sup> Chap. x.

<sup>2</sup> Chap. v.

<sup>5</sup> Chap. viii.

<sup>8</sup> Chap. xi.

<sup>3</sup> Chap. vi.

<sup>6</sup> Chap. ix.

<sup>9</sup> Chap. xii.

the land.<sup>1</sup> If at some future day the law of the constitution should be codified, each of the topics I have mentioned would be dealt with by the sections of the code. Many of these subjects are actually dealt with in the written constitutions of foreign countries, and notably in the articles of the Belgian constitution, which, as before noticed, makes an admirable summary of the leading maxims of English constitutionalism. It will therefore often be a convenient method of illustrating our topic to take the article of the Belgian, or it may be of some other constitution, which bears on the matter in hand, as for example the right to personal freedom, and to consider how far the principle therein embodied is recognized by the law of England; and if it be so recognized, what are the means by which it is maintained or enforced by our Courts. One reason why the law of the constitution is imperfectly understood is, that we too rarely put it side by side with the constitutional provisions of other countries. Here, as elsewhere, comparison is essential to recognition.

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## NOTE B

### RECENT ATTEMPTS IN THE UNITED KINGDOM TO ANTICIPATE ACTS OF PARLIAMENT

'By the statute 1 William and Mary, usually known as the Bill of Rights, it was finally settled that there could be no taxation in this country except under authority of an Act of Parliament. The Bill of Rights still remained unrepealed, and no practice or custom, however prolonged or however acquiesced in on the part of the subject, could be relied on by the Crown as justifying any infringement of its provisions. It followed that with regard to the powers of the Crown to levy taxation no resolution, either of the Committee for Ways and Means or of the House itself, had any legal effect whatever. Such resolutions were necessitated by a Parliamentary procedure adopted with a view to the protection of the subject against the hasty imposition of taxes, and it would be strange to find them

See page  
95.

<sup>1</sup> The rule of equal law is in England now exposed to a new peril. 'The Legislature has thought fit,' writes Sir F. Pollock, 'by the Trade Disputes Act, 1906, to confer extraordinary immunities on combinations both of employers and of workmen, and to some extent on persons acting in their interests. Legal science has evidently nothing to do with this violent empirical operation on the body politic, and we can only look to jurisdictions beyond seas for the further judicial consideration of the problems which our Courts were endeavouring (it is submitted, not without a reasonable measure of success) to work out on principles of legal justice.'—Pollock, *Law of Torts* (8th ed.), p. v.

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II

relied on as justifying the Crown in levying a tax before such tax was actually imposed by Act of Parliament.

‘His Lordship did not, however, understand that the Attorney-General on behalf of the Crown really dissented from this position.’<sup>1</sup>

The Attorney-General having failed to convince the Court that the tax had been authorized by law at the time of levying it, judgment was given against the Crown.

<sup>1</sup> Mr. Justice Parker in *Bowles v. Bank of England*, Times Law Reports, Nov. 5, 1912.

## CHAPTER III

### THE OPENING OF THE HIGH SEAS

#### I

As soon as the Greeks had learned to base government on the experience of the governed, European society began to progress. Asia, on the other hand, clinging to the idea that the existing order was divinely ordained, remained stationary, so that civilization was parted into two camps, each of which contended for mastery with the other. But Greece developed the commonwealth in a form too delicate to survive the struggle, and Rome, in organizing a state strong enough to save her own civilization, resorted to despotism, under which the patriotism essential to its vitality perished. Eventually its Western half was destroyed by German barbarians. They, however, revived the Empire in a form which prevented them from realizing the unity of a state, and failed, therefore, to develop a national law of their own, to recognize law as the supreme authority, or to learn how to mould it by the general experience of the community. The seed of the commonwealth, inherent in German custom, failed to fructify in mediaeval Europe, and was overgrown and stifled by the despotic law and tradition inherited from Rome. This was the theme of the first chapter of this inquiry, and the second chapter has explained how German custom came to take root in the British Isles and there developed a law and a polity which were essentially

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Results of the previous chapters summarized. The continental and English systems brought into conflict by the opening of the World.

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Teutonic. It was in England that the principle of the commonwealth, which had perished with the Greek and Roman republics, was once more realized, but in a form which transcended the narrow limitations imposed upon it, as the ancients believed, by Nature herself. Their inherent capacity for change—the necessary condition of growth—never deserted the people of Europe, and saved them from reverting to the condition of Asiatics. But the kind of state which not merely admits but actually stimulates growth was revived in England and not on the Continent. European civilization differs from that of Asia as one genus from another. In England the fundamental characteristics of the European genus were so developed as to form a distinctive species. Thus, at the close of the Middle Ages, the West had produced two main varieties of civilization which might have lived side by side without mutual conflict if new oceans and continents had not suddenly been opened as a field in which the exclusive claims of the one imposed upon the other a struggle for existence. The apple of discord which fell into the garden of the Hesperides and roused the nations to contend for its possession was the World itself.

Opening  
of the  
World  
brought  
about by  
Europe's  
increasing  
control  
over  
physical  
nature.

Throughout the Middle Ages the people of Europe, ignoring the regions and races that lay beyond it, thought of themselves as the universe.<sup>1</sup> Meantime, however, their increasing control over physical nature was destined, by enlarging their outlook and revolutionizing the conditions of life, to bring the Middle Ages to a close. They suddenly discovered how to navigate the high seas, reached the continents that lay beyond them, and became conscious of their own capacity to dominate them. But in extending to a larger world their now diverging systems they found themselves in collision.

<sup>1</sup> See p. 83.



This world-wide revolution was introduced by another most dangerous attempt from Asia to submerge Europe. The events which precipitated the struggle between Europe and England for the mastery of the world were themselves but a phase of 'that Eternal Question between West and East'<sup>1</sup> which was opened by the wars between Greece and Persia. It was the destruction of the last remnants of the Eastern Roman Empire by the Turks which more than anything else drove Europe to the maritime enterprise by which every ocean and shore on the face of this planet have in the last four centuries been exposed to the action of its civilization. Whether that influence was to be exerted in its Continental or in its Anglo-Saxon form was a matter which affected the other continents more vitally, perhaps, than Europe itself.

The Holy Roman Empire did little enough to keep order in Europe; but it did even less to protect Christendom against invasion from without. Happily for Europe, its gate was long guarded by the Eastern or Byzantine portion of the Roman Empire which survived for almost 1000 years after Odoacer extinguished the original Empire of the West. In 1204 the Crusaders paused in their advance against the Infidel to inflict on their fellow-Christians at Constantinople a blow from which the Byzantine Empire never recovered. In 1453 its capital was stormed by the Turks, and the last of the Caesars fell, buried beneath the bodies of his subjects. As when the Persians passed Thermopylae, and as when the Franks confronted the Saracens in the heart of France, so again the invading hordes of Asia swept across the natural frontiers of Europe to the gates of Vienna. Greece, the Aegean Islands, and the whole Balkan Peninsula were ground beneath their heel, and

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Changes precipitated by a new encroachment of the East on the West.

Fall of Constantinople and conquest of the Balkan Peninsula by the Turks.

<sup>1</sup> See page 28.

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III

Christendom, which had long wrestled with Islam for the sanctuary of her faith, now abandoned to that militant creed countries which had been the cradle of her civilization. To this hour the position of the Turk in Europe has remained the most difficult and dangerous of the problems which divide the world into armed camps.

The fall of Constantinople stimulated the Renaissance and Reformation, but closed the trade communications with the East.

In all the history of Roman rule no event was fraught with consequences more far-reaching than its final extinction at Constantinople. Byzantine scholars fled, with such of their manuscripts as they could carry, to the schools of Europe where the literature of ancient Greece was now being studied anew. Western civilization was stirred by a freshet from its primitive source which produced the Renaissance in art and the Reformation in morals and religion. Still greater was the revolution which followed in the sphere of practical affairs. The Turkish invasion had blocked the routes by which precious, and therefore portable, articles of commerce had been brought from the East. While the statesmen and soldiers of Europe were considering how the tide of Asiatic invasion could be stemmed, her mariners and merchants were asking whether there was no other route by which this ancient and most profitable commerce might be restored.

Naval crusade against Asia projected by Henry the Navigator.

Both these objects were ultimately achieved by a revolution of a different order from the social, religious, or political movements which had deflected human affairs in the past. Europe had now reached the stage when an increasing control over physical forces was beginning to influence the course of history, and her problems, political as well as commercial, were to find their solution in the enterprise of a royal inventor. Henry the Navigator was the fifth child of John I., King of Portugal, by his English queen,

Philippa, daughter of John of Gaunt. On coming of age he won his spurs in 1415 at the capture of Ceuta, a stronghold of Islam opposite Gibraltar. There he gained the applause of Europe by quelling a Moorish sortie single-handed, and the Pope, the Emperor, and the kings of England and Castile vied with each other in offering him distinguished commands. But the fall of Ceuta had turned his thoughts in another direction. Gold, ivory, and tropical products, drawn from the regions of the Niger, furnished the means by which the Moors made war on Christendom. The idea of reaching these countries by sea so as to take the Moors in the rear and divert their wealth to Christian uses was conceived by Prince Henry; and, as his biographer Azurara adds, he greatly desired to plant the Catholic faith among the heathen there lying in a state of perdition. History reveals him striding like a colossus with one foot planted in the Middle Ages and the other on the world of to-day. His aims were those of a crusader, but his methods those of modern invention and research. 'The three motives of Prince Henry—enmity to the Moslems, mercantile enterprise, and missionary zeal—profoundly influenced the whole history of the Portuguese in the East. As he aimed at outflanking the Moors in Africa by exploring down its western coast, so his greatest successors aimed at outflanking the Ottoman Empire by dominating the Red Sea.'<sup>1</sup> In solving the problems of their age they created those peculiar to our own.

Up to the time of Henry the Navigator mariners had mainly relied upon the oar, regarding sails merely as an auxiliary mode of propulsion for use only when the winds were moderate and favourable. The art of sailing, especially against head winds, was but

His work  
in develop-  
ing the art  
of naviga-  
tion.

<sup>1</sup> Hunter, *A History of British India*, vol. i. p. 73.

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little developed, for it was not possible to design a ship really suited for the purpose so long as it had also to be pierced for oars. The development of sails was just as fatal to the retention of oars as the development of steam power to the retention of yards and rigging. Ships built for rowing are dangerous craft in high seas, and so long as their motive power was furnished by human sinews a relatively large crew had to be carried and a corresponding space reserved for their necessary victual. For this reason it was difficult for the rowed galley to go any great distance from ports where supplies could be obtained. Galleys had long braved the ocean off the coasts of Spain, France, and Britain within measurable reach of civilized harbours. But the project now proposed by the Prince required ships which could face Atlantic storms off savage and inhospitable shores and dispense with frequent access to friendly ports. For such voyages a type of vessel which was independent of oars was essential. Not content, moreover, that his mariners should depend upon the sight of land for the direction of their course, he set to work to devise instruments and methods wherewith to recognize their position on the open sea and find a path across it. To these objects he dedicated his life when in 1418, at the age of twenty-four, he turned his back on the world and 'retired to the wind-swept promontory of Sagres at the southern extremity of Portugal. On that barren spur of rocks and shifting sands and stunted juniper, with the roar of the ocean for ever in his ears, and the wide Atlantic before him inviting discovery from sunrise to sunset, he spent his remaining forty-two years, a man of one high aim, without wife or child. Amid its solitudes he built the first observatory in Portugal, established a naval arsenal, and founded a school for navigation, marine mathematics, and chart-making. Thither he

invited the most skilful pilots and scientific sailors of Christendom, from Bruges near the North Sea to Genoa and Venice on the Mediterranean. Thence, too, he sent forth at brief intervals exploring expeditions into the unknown South: expeditions often unfruitful, sometimes calamitous, even denounced as folly and waste, but which won the African coast as an outlying empire for Portugal. He died at Cape St. Vincent in 1460, having expended his own fortune together with his splendid revenues as Grand Master of the military Order of Christ on the task, and pléged his credit for loans which he left as a debt of honour to his nation. His tomb, in the same beautiful chapel where his English mother rests, at Batalha, bears by the side of his own arms as a royal prince of Portugal, the motto and device of the Garter conferred on him by our Henry VI., and the cross of the Portuguese Order of Christ. On the frieze, entwined with evergreen oak, runs the motto which he solemnly adopted in young manhood—*Talent de bien faire*, the resolve to do greatly. The king, wrote Diogo Gomez, “together with all his people mourned greatly over the death of so great a prince, when they considered all the expeditions which he had set on foot”—in the words of his monument on the gateway of Fort Sagres, “to lay open the regions of West Africa across the sea, hitherto not traversed by man, that thence a passage might be made round Africa to the most distant parts of the East.”’<sup>1</sup>

His squadrons, however, continued their explorations under three successive sovereigns of his house, and rapidly pushed their way down the African coast. In 1471 they passed the equator, and in 1484 reached the Congo. In 1486 Bartholomew Dias was carried by a storm beyond the sight of land, round the

Result of  
Henry's  
work.  
The Cape  
of Good  
Hope  
rounded  
by Dias,  
1486.

<sup>1</sup> Hunter, *A History of British India*, vol. i. pp. 62-4.

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southern point of Africa, and reached the Great Fish River, north of Algoa Bay. On his return journey he saw the promontory which divides the oceans, as the narrow waters of the Bosphorus divide the continents of the East and West. As in the crowded streets of Constantinople, so here, if anywhere, at this awful and solitary headland the elements of two hemispheres meet and contend. As Dias saw it, so he named it, 'The Cape of Storms.' But his master, John II., seeing in the discovery a promise that India, the goal of the national ambition, would be reached, named it with happier augury 'The Cape of Good Hope.' No fitter name could have been given to that turning-point in the history of mankind. Europe, in truth, was on the brink of achievements destined to breach barriers, which had enclosed and diversified the nations since the making of the World, and commit them to an intercourse never to be broken again so long as the World endures. That good rather than evil may spring therefrom is the greatest of all human responsibilities, and one which rests and must long continue to rest with Europeans. Nor can they, in leaving Europe, leave it behind. It follows them wheresoever they go—a task which needs for its fulfilment a faith unshakable as that mighty Cape.

India  
reached by  
Vasco da  
Gama in  
1497.  
Crusading  
character  
of his  
expedition.

In 1497 Vasco da Gama sailed from the little chapel built by Prince Henry on the Tagus that mariners might receive the Sacrament as they came and went. Rounding the Cape, on Christmas Day he sighted the Bluff which now shelters Durban, and named the country Terra Natalis. In 1498 he reached Calicut on the coast of India, and founded the Eastern Empire of the Portuguese. 'The expedition struck, however, a chord of Portuguese national feeling. Both King and people regarded it as a continuation of the Crusades: a crusade on a larger

scale and with better prospects of plunder. Camoens opens the seventh Book of his *Lusiad* by reproaching Germany, England, France and Italy for their coldness to the sacred cause; calls them once more to Holy War; and shames their silence by declaring that Portugal will single-handed fight the battle of God.'<sup>1</sup>

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In the long struggle for the mastery of their own soil the Iberian Crusaders had caught from Islam the fierce fanaticism of its spirit. Among the 1200 warriors sent by King Emmanuel to follow up the discovery of Vasco da Gama were included a band of friars, and the commander of the expedition received the following instructions: 'Before he attacked the Moors and idolators of those parts with the material and secular sword, he was to allow the priests and monks to use their spiritual sword, which was to declare to them the Gospel . . . and convert them to the faith of Christ. . . . And should they be so contumacious as not to accept this law of faith . . . and should they forbid commerce and exchange . . . in that case they should put them to fire and sword, and carry on fierce war against them.'<sup>2</sup> Gentler counsels were, however, not wholly wanting. Bishop Osorio blamed Almeida, who commanded the Portuguese forces from 1503 to 1509, for the torture and massacre of prisoners after the battle of Diu, and censured a captain who in 1507, ignoring the Portuguese passport which they carried, seized an Arab crew, sewed them up in sails, and threw them into the sea. But little was done to mitigate the horrors of the struggle. 'Almeida "blew his prisoners from guns before Cannanore, saluting the town with their fragments." On the capture of Brava, the Portuguese soldiers "barbarously cut off the hands

Cruelties  
of the  
Portu-  
guese.

<sup>1</sup> Hunter, *A History of British India*, vol. i. p. 90.

<sup>2</sup> *Ibid.* vol. i. p. 138, quoting from De Barros, decade i. lib. v. cap. i.

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and ears of women, to take off their bracelets and earrings, to save time in taking them off." These were not exceptional barbarities. The permanent attitude of the Portuguese to all Asiatics who resisted was void of compunction. To quote a few examples from contemporary manuscripts; a letter to the King of Portugal in 1518 speaks of the people of Dabul as "dogs" who "do not want but the sword in hand." In 1535, at the capture of the petty island of Mete near Diu, "all were killed, without allowing a single one to live, and for this reason it was henceforward called the Island of the Dead." In 1540 the Zamorin was compelled to agree to cast out of his dominions all who would not accept the terms imposed, "and if they should not wish to go, he will order them to be killed." In 1546, says the official report of the siege of Diu, "we spared no life, whether of women or children."<sup>1</sup> The kings of Portugal claimed to be lords of the East; but their actual conquests in India were in fact limited to the tiny area of Goa which the Portuguese Republic holds to-day. Their real and substantial achievement was the dominion of the Eastern Seas.

While Portugal was opening the route to Asia by sea, Spain, in search of the same object, had stumbled upon the New World. Columbus, by his marriage to the daughter of one of Prince Henry's commanders, got access to his nautical journals, maps,

Attempt of Columbus to reach Asia by the West led to his discovery of West Indies 1492, and presently of America, which he mistook for Asia.

<sup>1</sup> Hunter, *A History of British India*, vol. i. pp. 139-40. The allegations of cruelty are based on the following original authorities: Stanley's *Three Voyages of Vasco da Gama*, xxix.-xxxii., Hakluyt Society, 1867. Damiao de Goes (*Chronica do Felicissimo Rey Dom Manoel*, Lisbon, 1566-1567, Stanley, *ut supra*, xxxiii.). *Asia Portuguesa*, Lisbon, 3 vols., 1666-1675 (*The Portuguese Asia* of Manuel de Faria y Sousa, translated by Captain John Stevens, London, 3 vols., 1695, vol. i. p. 116). Letter from Joao de Lima for the King, dated Cochim, December 22, 1518 (India Office MSS.). Contract between the King of Gujarat and Nuno da Cunha, Captain-General and Governor of India, dated October 25, 1535, footnote (India Office MSS.). Contract between the Viceroy Dom Garcia and 'the King of Calicut,' dated January 1, 1540 (India Office MSS.). Letter of Manuel Rodrigues for the King, dated Diu, November 24, 1546 (India Office MSS.).



and instruments. Rightly conceiving the world to be a sphere, he concluded that Asia might be reached by way of the West. Failing, however, to secure the support of the Portuguese king, he placed his services at the disposal of Spain, and in 1492 discovered in the West Indian Islands the outworks of the American continent. In a series of voyages covering the next twelve years he reached the coast of South America and founded a Spanish Empire there and in the West Indies.

Columbus always believed himself to have discovered the west coast of Asia, and died without knowing that in searching for an old continent he had brought to light a new one. It was in the same quest that Cabot had in 1497 discovered North America for England on behalf of certain Bristol merchants holding a patent from Henry VII. His contemporaries believed that he had gained for her 'a great part of Asia, without a stroke of the sword.'<sup>1</sup> The real character of the discovery was realized when in 1513 Vasio Nunez de Balboa (not Cortes, as Keats supposed), surmounting the Isthmus of Panama—

Cabot's discovery of North America for England in 1497. Pacific discovered by Balboa 1513. Recognition of America as a separate continent.

stared at the Pacific—and all his men  
Look'd at each other with a wild surmise—  
Silent, upon a peak in Darien.

Then, at length, Europe realized that America was not the extremity of the ancient world. It was as though some new planet had swum into her ken. By plunging into the sea, Balboa sought to annex the ocean itself to the kingdom of Spain.

In 1519 Cortes landed with about 700 men on the coast of Mexico, and in scarcely more than a year was master of the Mexican Empire. Some twelve years later Pizarro landed in Peru, and the Empire of the Incas collapsed before an invasion of

Conquest of Mexico. Pacific opened by Magellan 1520. Circumnavigation of the world by one of his ships.

<sup>1</sup> Hunter, *A History of British India*, vol. i. p. 195, quoting letter from Rainondo de Soncino to the Duke of Milan, 18th December 1497.

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183 men. Seldom has the mastery over physical forces achieved by Europe been exhibited with more startling effect. The native civilizations of America shivered at the first blow. 'Whether the pitcher touches the iron or the iron the pitcher, it is bad for the pitcher,' as the Spaniards say, and no earthenware vessel, however great it may be, will long withstand the blows of a hammer. Europe conquered America by reason of the same qualities which had enabled it to repel the successive hordes which swarmed against it from Asia. Helps and Prescott have recounted the barbarities of these conquests, which were worse even than those perpetrated in the East by the Portuguese. It is needless to dwell upon them here. Meantime the belief of Columbus that Asia could be reached by the West had been justified, for in 1520 Magellan had passed the straits which now bear his name, crossed the ocean upon which Balboa had looked, and reached the Philippines. There he perished; but one of his ships, the *Vittoria*, returned by the Cape of Good Hope, and thus demonstrated the theory held by Columbus that the World was round.

Depend-  
ence of  
Continen-  
tal dis-  
coverers  
on govern-  
ment sup-  
port. Divi-  
sion of  
their dis-  
coveries  
between  
Spain and  
Portugal  
by the  
Papacy.

It is important to note the absolute dependence on royal patronage of explorers like Vasco da Gama, Columbus, and Magellan. Their fleets were provided by kings, who, in financing these expeditions, had no thoughts of opening new trade routes for any but themselves. The lands discovered, as well as the wealth to be drawn from them, they not un-naturally regarded as a prize, to be shared with their subjects perhaps, but certainly not with aliens. The title claimed by the Crown of Portugal over Africa and the East, and by that of Spain over America and its adjacent islands, was an exclusive one. Their claims, moreover, had received a sanction which mediaeval Europe accepted as the ultimate

source of all human authority. In a Bull dated the 4th of May 1493, Pope Alexander VI. assigned to the kings of Spain 'All the main lands and islands found or to be found, discovered or to be discovered, toward the west and south, drawing a line from the Arctic pole to the Antarctic pole, that is, from the north to the south, Containing in this donation, whatsoever main lands or islands are found or to be found toward India, or toward any other part whatsoever it be, being distant from, or without the aforesaid line drawn a hundred leagues toward the west and south from any of the islands which are commonly called De los Azores and Cape Verde. All the islands therefore, and main lands, found and to be found, discovered and to be discovered, from the said line toward the west and south, such as have not actually been heretofore possessed by any other Christian King or Prince, until the day of the nativity of our Lord Jesus Christ last past, from the which beginneth this present year, being the year of our Lord M.CCCC.LXXXXIII., whensoever any shall be found by your messengers and captains, We by the authority of Almighty God granted unto us in Saint Peter, and by the office which we bear on the earth in the stead of Jesus Christ, do for ever by the tenour of these presents, give, grant, and assign unto you, your heirs and successors (the Kings of Castile and Leon), all these lands and islands, with their dominions, territories, cities, castles, towers, places, and villages, with all the right and jurisdiction thereunto pertaining: constituting, assigning, and deputing you, your heirs and successors, the lords thereof, with full and free power, authority, and jurisdiction. . . . We furthermore inhibit all manner of persons, of what state, degree, order, or condition soever they be, although of Imperial and regal dignity, *under the pain of the sentence of excommunication which they*

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*shall incur if they do to the contrary, that they in no case presume, without special licence of you, your heirs and successors, to travel for merchandise or for any other cause, to the said lands or islands, found or to be found, discovered or to be discovered, towards the west and south.'*<sup>1</sup>

A year later Spain and Portugal agreed in a treaty (for which they asked and received the sanction of the Pope) to move the line 270 leagues further West, with the result that Brazil ultimately fell to the share of Portugal. The subsequent voyage of Magellan, though proving the necessity of a second line to divide the Eastern frontiers of the two empires, did nothing to impair the effect of the Papal awards in appropriating Africa, America, and Asia to the two Iberian kingdoms. The other nations of Europe were legally limited thereby to their own territorial waters. From the high seas the English were excluded with the rest, except in so far as they might dare to ignore sanctions which were then regarded as binding on Christendom.

Authority of the Papacy invoked by Spain and Portugal to secure to themselves the monopoly of their discoveries. Reasons why this claim was questioned.

In the theory of the Middle Ages inherited from Imperial Rome the Pope was regarded as the international lawgiver, and the Emperor as the secular authority whose function it was to enforce the Papal commands. How far Europe accepted the latter side of this theory has already been seen. But the fall of Constantinople had stimulated influences which were leading the Northern races to question it. The study of Greek originals gave rise to a questioning of accepted canons and was an important factor in the whole Renaissance movement. At the same juncture the unity of the Church was broken by Luther, who, in 1517, published his theses at Wittenberg. In 1534 an Act was passed in England repudiating the authority of Rome, and in 1536

<sup>1</sup> Weare, *Cabot's Discovery of North America*, pp. 67-8.

Calvin published the *Institutio Christianae religionis*. Protestantism spread to the Netherlands, and in 1568 led to their revolt from Spain. The Papal award ceased, so far as England, Holland, and the Northern States of Germany were concerned, to possess the sanction of international law, and thereafter its validity depended on the physical forces which could be marshalled to support it—on the fleets which Spain or Portugal could oppose to those of Holland and Britain.

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To the Spaniards and Portuguese of the sixteenth century, their right to reserve to themselves the continents they had opened must have appeared too plain for argument. The claims advanced by the mariners of other nations to share the fruits of their enterprise must indeed have seemed to violate the fundamental religious and political conceptions of the age; for were they not contrary to the verdict of the court divinely instituted for the final adjudication of human affairs? It was a conflict, not merely of interests, but of ideals. The cause for which the Portuguese and Spaniards fought with such valour was even more sacred to them than the opposite cause to their English opponents. Had wealth alone been the object of the struggle, compromise might have been possible; for wealth, at any rate, is capable of division. But more than wealth was at stake. In the course of ages two sections of Europe had developed their social structures on principles so different as to be mutually incompatible as soon as both were committed to a common field of activity. The Spanish right to monopolize the newly opened world was justified by the political theory of the Continent. England had rejected that theory and challenged the monopoly based upon it, because it would have closed to her enterprise the resources which alone could enable so small a state to survive.

Nature of  
the issues  
at stake.

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in the struggle for existence. Either party was contending for the trade of the world, the one to engross it, the other to share it. But the passion men have for maintaining or extending their own manner of life was the ultimate motive behind the contest, and the rivalry for trade was really a struggle for the resources required to realize a cherished ideal. Spaniards and Englishmen seized wealth wherever they could find it; but to Drake and his captains the liberties of their country were dearer than life, and so also to the Spaniards were the ideals and traditions of Spain. Of necessity the champions of ideals fight for the material resources or physical positions by which alone those ideals can be held. To us it is clear as day that the question which mattered was how far the future inhabitants of the World were to inherit the principles of auto-cracy or freedom. But the combatants who met in the twilight of the dawn can scarcely have discerned the vastness of the issues their valour would decide.

The issues  
compared  
to those  
of the  
American  
Civil War.

It is instructive to compare these issues with those which, three centuries later, brought the South of the United States into conflict with the North. There, as in Europe, two mutually destructive principles, the one based on freedom, the other on slavery, had in separate though adjacent territories brought into being two systems of society which might long have continued side by side without serious consequences if the opening of the West had not raised the question whether its vacant territories were to be developed on the basis of free or slave labour. The two principles then came into collision in a way that admitted of no compromise. Each side believed itself to be right with such sincerity that thousands were ready to die for their belief. The wars, indeed, which have shaped human destiny cannot be simply represented as struggles between right and wrong, for the real

antagonists who had to be reckoned with on either side have been men who deemed certain principles of greater value than their lives. But the issues which, in truth, cause such wars are generally obscured by the trivial and often sordid interests which are the occasion of the actual outbreak. This was often the case in the three centuries of contest between Europe and England for the dominion of the new continents and seas which followed the discoveries of Vasco da Gama and Christopher Columbus.

In the Middle Ages, which were now closing, England had taken her part in the scramble of continental nations for territory at the cost of her nearest neighbours. From the sixteenth century she abandoned these ambitions once for all. 'Clear-sighted persons at Court advised, as early as the reign of Henry VIII., a policy of colonial enterprise in place of interference in the continental wars. "Let us," they said, "in God's name, leave off our attempts against the *terra firma*, as the natural situation of islands seems not to suit with conquests of that kind. Or, when we would enlarge ourselves, let it be that way we can, and to which, it seems the eternal providence has destined us, which is by sea. The Indies are discovered, and vast treasure brought from thence every day. Let us, therefore, bend our endeavours thitherwards; and if the Spaniards and Portuguese suffer us not to join with them, there will yet be region enough for all to enjoy.'" <sup>1</sup> But these clear-sighted persons were ignoring the terms of the Papal Bull of 1514, in accordance with which all the continents opened to Europe by the discoveries of Columbus and Vasco da Gama were closed except to Spain and Portugal. That monopoly had first to be

The Spanish claim to monopolize the New World disputed by England.

<sup>1</sup> Hunter, *A History of British India*, vol. i. p. 223. The quotation is from Macpherson's *Annals*, *sub anno* 1511, ii. 39, on the authority of Lord Herbert.

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broken, and when in 1580 Portugal was absorbed by Spain the issue lay between England and that country. To Philip of Spain, England by her final separation from Rome had become 'the necessary object of another Holy War.'<sup>1</sup> While renouncing their spiritual allegiance to Rome, the Tudor sovereigns for a time shrank from challenging her authority in international law. But the Protestant spirit of England was rising, and in 1578 Drake, openly disregarding the Papal award, rounded Cape Horn, burst into the Pacific, visited the Moluccas, and returned to England by the Cape of Good Hope. An open rupture with Philip was now inevitable, and in order to challenge the Spanish monopoly, Elizabeth was at length forced to deny the validity of the Pope's award, which she presently described as a disputed 'donation of the Bishop of Rome.' 'Prescription,' she asserted in 1580, 'without possession availeth nothing.'<sup>2</sup> In words that anticipate the dawning problem of aerial navigation she argued that 'the use of the sea and air is common to all . . . as neither nature, nor public use and custom permitteth any possession thereof.'<sup>3</sup> And, in truth, no smaller principle than the freedom of the high seas was at stake. For in forbidding the ships of any nation but Spain and Portugal to visit countries, whether known or unknown, across the seas opened by Henry the Navigator, the Papacy practically closed the ocean beyond the territorial waters of Europe. All seas but those three miles from the land (with the exception of certain recognized *maria clausa*) have so long been regarded as a common heritage and a pathway open to all, that men are prone to forget that the right was ever denied. It is a principle now rooted in the moral

<sup>1</sup> Egerton, *British Colonial Policy*, p. 15.<sup>2</sup> *Ibid.* p. 16.<sup>3</sup> Hunter, *A History of British India*, vol. i. p. 207, quoting Camden, *History of Elizabeth*, p. 255 (ed. 1875).



habits of mankind, but to make it so the principle had once to be asserted by force.

How came it that so small a people as the English were able to assert this freedom for themselves in successive contests against the greatest powers of Western Europe? Again the answer to this question must be sought in the insular character of their home. The sea, which sheltered them from the armies which were devastating the Protestant states of Europe and conserved their energies, had also accustomed them to the handling of ships. Henry the Navigator had inaugurated an epoch in which that kind of skill was to count for more than the power of great autocracies, to pour troops into the field. Before the sixteenth century was half spent the English were the people of Europe who knew best how to cross the ocean and hold their own against any power which sought to oppose them on that element. Henry VIII. created the English navy, and scarcely a year of his reign passed without seeing fresh improvements in the build and armament of his ships. Capacity to devise new means to meet changing needs is the natural fruit of freedom. It now began to tell in favour of the English as against the Spaniards, and ere Henry VIII. closed his reign his navy was the most powerful on the seas. The struggle for world power was to be fought on an element where the wealth and daring of an island race, inspired by the enterprise and patriotism which free institutions beget, outbalanced the advantage which their vastly superior numbers gave to the continental kingdoms. In conquests by land the mere number of soldiers available is of paramount importance, for troops must be detached to hold the roads behind an invading army so that it shrinks at every stage of its advance into an enemy's country. With maritime warfare it is otherwise. The combatants are confined to the decks of ships,

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Why Eng-  
land was  
able to  
assert the  
freedom  
of the sea.  
Creation of  
her navy.  
Peculiar  
character-  
istics of  
sea-power.

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and the ships can be moved at will to any part of the ocean, so that the stronger navy can hunt down the weaker and destroy it. In doing this a fleet is not, like an army, continuously weakened by having to shed part of its forces to protect the route behind it. Without diminishing its fighting strength, it can search out the opposing fleets to destroy them, and if it succeeds it is then free to transport troops where it will, and to prevent the enemy reinforcing or supplying its armies beyond the sea. A small people should be able to find crews for any number of ships that it can afford to build and maintain. Then, as now, it was a type of conflict bound in the end to be determined by wealth rather than by numbers. In contending for the wealth of the newly opened continents each side knew instinctively that it was fighting for the means essential to victory.

Defeat of  
the  
Spanish  
Armada.

The claim to the freedom of the seas was advanced by Elizabeth in 1580. In 1588 Philip marshalled all his maritime resources for the destruction of England and launched the Armada against her in vain. Outmanœuvred by the English sailors, riddled by their shot, and battered by storms, a few beaten hulks returned to Spanish ports, and the monopoly of the high seas was broken, never to be renewed.

The secret  
of sea-  
power  
ignored by  
Spain.

It was in this struggle that the British captains realized the essential conditions of maritime defence. Drake had urged on Queen Elizabeth that the right way to protect Her Majesty's shores was not by remaining near them, but by seeking out the fleets of Philip and destroying them, even in his own ports. Thenceforward this principle was recognized as the basis of British strategy. In the Spanish Empire there were some who perceived its vital importance, for in 1624 Manoel Severim de Faria, a Portuguese writer, 'in a treatise which anticipates the modern philosophy of sea-power, urged that the one course

capable of arresting the rapid decline of the Iberian Empire was that the capital should be transported from Madrid to Lisbon, and that the total maritime strength of the monarchy should be employed in the British Channel upon the destruction of the Dutch and English navies. Such bold and drastic counsels were thrown away upon the Spanish Court.' <sup>1</sup>

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## II

### THE OPENING OF THE SEAS : ITS EFFECT IN THE EAST

The expeditions sent out by Henry the Navigator and his successors had from the outset been military. They were Crusades upon which had been grafted aims of a commercial character. The merchandise most eagerly sought was spice which, until the trade routes were cut by the Turks, had reached Europe in small and precious parcels borne across Asia on the backs of camels. A ship-load of spices was worth a king's ransom, and even if trade had been the only object of the Portuguese, no one would have dared to entrust such cargoes to crews unable to protect their vessels from robbery. Single ships, however powerfully armed, ran fearful risks, and throughout the sixteenth century the trade with the Far East was as a matter of course carried on by fleets which were as ready to fight as to trade. From first to last the enterprise was an affair of state conducted by the king, and when in 1580 Portugal and Spain were united under one crown the East Indian trade became the monopoly of the King of Spain. Hitherto

The Dutch  
East India  
Company.  
Its semi-  
political  
character.

<sup>1</sup> Fisher, *Political Unions*, p. 14, quoting Manoel Severim de Faria, *Discursos varios politicos* Evora, 1624.

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the Portuguese had confined themselves to the wholesale trade with India, leaving to the merchants of the Netherlands the lucrative business of distributing the cargoes to the ports of Europe. Antwerp was the great emporium for Eastern wares; but when Spain absorbed Portugal and took over the Indian trade the Netherlands were in open revolt against her rule. Cut off from the business of distribution, the Dutch merchants determined to assert their right to bring spices direct from the islands of the Malay Archipelago and generally to trade with the East. A company closely associated with the state was constituted for this purpose. The charter granted to it by the States General 'reads like a Protestant counterpart of the privileges granted to Portugal by the Bull of 1493, except that religious proselytism drops out of view, a commercial company takes the place of the King, and instead of the *poena excommunicationis latae* against rivals or intruders, we have the direct arbitrament of the sword.'<sup>1</sup> The object aimed at by Holland 'was not, as Portugal's had been, to take vengeance on the *nefandissimi Machometi secta* for the loss of the Holy Places in Palestine, or to swell the pride of a Royal House by new Asiatic titles, and to bring the kingdoms of the East within the Christian fold, but by establishing a sufficient degree of sovereignty over the islands to prevent them from selling their spices to any European nation but herself. Where she found a stringent supremacy needful she established it; where a less control sufficed, she was at first willing to leave the princes and peoples very much to themselves.'<sup>2</sup>

The  
English  
East India  
Company.  
Its non-  
political  
character.

In 1600 the first English East India Company was formed. But 'it was in no sense a national enterprise, or a semi-national association like the

<sup>1</sup> Hunter, *History of British India*, vol. i. pp. 239-240.

<sup>2</sup> *Ibid.* i. p. 342.

Dutch East India Company. The Queen allowed a private group of her subjects to adventure their capital in the East India trade, and granted them such privileges as did not interfere with her own foreign policy. When their interests clashed with her foreign policy, she did not hesitate to withdraw her support.<sup>1</sup> The aims of this company were exclusively commercial. For the first ninety years of its existence the directors were steadfast in their resolve to avoid the acquisition or government of territory, notwithstanding the pressure put upon them by their agents. In 1616 their policy was announced by Sir Thomas Roe in emphatic terms. 'A war and traffic are incompatible,' he wrote. 'By my consent you shall in no way engage yourselves but at sea, where you are like to gain as often as to lose. It is the beggaring of the Portugal, notwithstanding his many rich residences and territories that he keeps soldiers that spend it, yet his garrisons are mean. He never profited by the Indies, since he defended them. Observe this well. It hath been also the error of the Dutch, who seek Plantation here by the sword. They turn a wonderful stock, they prowl in all places, they possess some of the best; yet their dead payes (payments) consume all the gain. Let this be received as a rule that if you will profit, seek it at Sea, and in quiet trade; for without controversy, it is an error to affect garrisons and land-wars in India.'<sup>2</sup>

Four years later the directors, in pursuance of this policy, repudiated a proclamation dated from Saldanha Bay, by which two of their captains had annexed Table Bay. The two harbours enclosed by the Cape peninsula were, in truth, the key to the

<sup>1</sup> Hunter, *History of British India*, vol. i. p. 256.

<sup>2</sup> *Ibid.* vol. ii. pp. 241-242, quoting Foster, *Embassy of Sir Thomas Roe*, vol. i. p. xliii.

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The English Company defeated the Portuguese, and, when excluded by the Dutch from the Spice Islands, established their position in India. The policy of exclusion and its fatal effects.

Eastern trade. But however pacific the intentions of the London merchants, their right to navigate the Indian seas had to be asserted by powder and shot, and after a series of battles the Portuguese were finally beaten by Dounton at Surat in 1615. The Netherlands, however, had in the course of their long struggle with Spain developed their maritime power, and the Dutch East India Company was now dominant in the East. Their jealousy of English intrusion into the Spice Islands culminated in 1623 in the torture and massacre of the English settlers at Amboyna, an island from which the Portuguese had been ejected by the Dutch in 1609. Indirectly this outrage led to the foundation of the Indian Empire, for the English Company, withdrawing to the mainland, developed the power which afterwards enabled them to dominate it. The Dutch, meantime, intent upon monopolizing the whole trade of the Spice Islands, were occupied with driving out the Portuguese. They were neither the first nor the last to believe that dependencies can be made a close preserve, or to realize too late that they languish when every aperture is closed against commerce with the world outside. 'The rapid and signal downfall of the Dutch colonial empire is to be explained by its short-sighted commercial policy. It was deliberately based upon a monopoly of the trade in spices, and remained from first to last destitute of the true imperial spirit. Like the Phoenicians of old, the Dutch stopped short of no acts of cruelty towards their rivals in commerce; but, unlike the Phoenicians, they failed to introduce a respect for their own higher civilization among the natives with whom they came in contact.'<sup>1</sup> Spain had already sapped her own vitality by yielding to the same exclusive instinct, and had ceased to be the dominant power of Europe. That position

<sup>1</sup> Hunter, *Ency. Brit.*, vol. xiv. p. 405, 11th ed.

was now assumed by France, and the menace of this powerful neighbour handicapped Holland in her struggle for naval supremacy with a rival whose territories were shielded by the sea. Exclusion was a game at which two could play, and England, by the Navigation Acts, ruined the carrying trade of the Dutch. These measures in turn became the basis of the 'Commercial System' which cost England the allegiance of her American colonies.

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William of Orange ascended the English throne in 1689, and established a peace with Holland which lasted for little short of a hundred years. The struggle for the empire of the sea and of the continents beyond it now lay between France and England, and only ended with the battle of Trafalgar. The smaller nation prevailed (at times against Europe in arms), mainly because it was able to concentrate its energies on the maritime contest, while those of France were consumed in land wars with neighbouring powers.<sup>1</sup> The genius of Clive and Wolfe would have been of little use had England not been able to dominate with her fleets the routes which led to Asia and America.<sup>2</sup> It was from these distant continents that she drew the wealth which enabled her to maintain the supremacy at sea which was the condition of her existence. Without it she would have perished, and with her the civilization for which she stood.

The struggle with France, and the conditions which determined its issue.

In challenging the determination of the strongest power in Europe to exclude them from the oversea trade, the English became masters of the sea and the strongest power in India at the very moment when native rule in India was finally breaking down. The English East India Company started, as has been pointed out, with the deliberate purpose of confining itself to trade and of avoiding government. It took

Reasons which compelled the English East India Company to assume the task of government.

<sup>1</sup> Mahan, *Influence of Sea Power on History*, p. 226.

<sup>2</sup> *Ibid.*, pp. 306-307.

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close upon a century's experience to teach the directors that the kind of trade upon which they were embarking could not be developed unless they accepted the task of territorial administration. Up to the middle of the fifteenth century the difficulty of transport had limited the commerce between Europe and the Far East to articles of small size and great value. Silk, jewels, and spice filtered in slender quantities through Alexandria, Smyrna, or Constantinople, to the warehouses of Venice, Cadiz, Lisbon, Bordeaux, Amsterdam, Antwerp, or London, for distribution over Europe. Between these European ports a commerce of a different kind was carried on in wine, grain, wool fabrics, and other bulky articles which had to be warehoused at the ports in sufficient quantities to make up the cargoes of the ships which carried them. But such massing of wealth was only possible under the conditions of order which had come into being in Europe. The moment that fleets were sent to find cargoes on the coast of India, European merchants began to discover that for trade on such a scale a certain degree of protection for property on land is essential in both the countries which are taking part in it. They were obliged to appoint agents in India to collect cargoes in depots, or factories as they were called, against the arrival of their fleets. The problem was much the same as that which English and Russian merchants are facing in Persia at the present day.

Gradual  
assump-  
tion by  
the Com-  
pany of  
political  
responsi-  
bilities.

These operations began in Northern India just after the Moslems had established a vigorous and despotic sovereignty under the Mogul Emperor Akbar in that part of the sub-continent. Before the close of the seventeenth century the rule of the Mogul Emperors had followed the usual course of Oriental despotisms established by conquest. The Mohammedan bigotry of the Emperor Aurangzeb



turned his subjects into foes, the Mogul Empire broke down, and India was left without any central control or union. There ceased to be any Government which could protect the factories of the Company either against the Portuguese, Dutch, or French, or from the rapacity of the native rulers themselves. But it was not till the closing years of the seventeenth century that the Company recognized the impossibility of continuing to act on the maxims of Roe. Even so late as 1681, the Governor in London wrote: 'All war is so contrary to our constitution as well as our interest, that we cannot too often inculcate to you our aversion thereunto.'<sup>1</sup> But three years later they had changed their tone, and in 1684 the directors recorded the remark that 'though our business is only trade and security, not conquest, yet we dare not trade boldly or leave great stocks where we have not the security of a fort.'<sup>2</sup> In 1685 they ordered the Black Town of Madras to be fortified, and on the 16th March 1686 a letter was despatched abandoning the policy of Roe and accepting the conclusion which had been forced by hard facts upon their agents in India, 'namely, that since the native governors have taken to trampling upon us, and extorting what they please of our estate from us, by the besieging of our Factorys and stopping of our boats upon the Ganges, they will never forbare doing so till we have made them as sensible of our Power, as we have of our Truth and Justice. And we, after many Deliberations are firmly of the same Opinion, and resolve with God's blessing to pursue it.'<sup>3</sup> The factories had therefore to be equipped as forts. But a fortified settlement depends for its sustenance as well as for its trade on the people and country immediately surrounding it,

<sup>1</sup> Hunter, *History of British India*, vol. ii. p. 246, quoting letter from the Court of Directors to the Bombay Council of 22nd April 1681.

<sup>2</sup> *Ibid.* vol. ii. p. 246.

<sup>3</sup> *Ibid.* vol. ii. p. 241.

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and is driven in time to protect them as well as itself. Protection involves administration, and administration the raising of taxes and revenue. By an inevitable sequence of events the fortified factories of Bombay, Madras, and Calcutta each became a nucleus of government, arbitrary, perhaps, as compared with that in the British colonies of America, but just, moderate, and humane as compared with the rule of the native despots. It was no idle boast when the Company claimed that the Indians 'do live easier under our government than under any government in Asia.'<sup>1</sup> When in 1763 the French power was beaten and practically withdrawn from India, the Mogul Empire had already broken down, and the country plunged once more into a series of internecine wars between its various races and dynasties. From these wars it was impossible that the East India Company with its vast and rapidly growing interests should stand aside. Quickly it became the sovereign power of India, for precisely the same reason that Rome secured and long maintained the sovereignty of Europe, because it was the one effective power capable of creating and maintaining order.

The  
Company  
gradually  
displaced  
by the  
British  
Govern-  
ment.  
Inherent  
defects of  
company  
rule.

But for the organization provided by the Company, trade with the East could not have existed on any serious scale, and the Company claimed an exclusive right to it. By a series of steps the British Government assumed control of this powerful corporation, and gradually opened the Indian trade to other British subjects, and finally to all the world, on equal terms. Eventually the Company was expropriated and abolished, and the British Government took upon itself the task of governing India. The principles underlying trade and government are so fundamentally different as to impose upon those who try to combine them a dual and sometimes conflict-

<sup>1</sup> Hunter, *History of British India*, vol. ii. p. 272.

ing responsibility. Legitimate trade, as distinguished from plunder in all its various forms, depends on a community of material interests, and can only be established where such a community exists. Such community is found where two or more parties each have something which the other wants, so that an exchange suits all of them. The motive of trade is frankly and properly self-interest. Government rests on a motive the exact antithesis of this. Its ultimate authority is born, not of self-interest, however enlightened, but of that still small voice which moves men to place the interest of the community before their own. It is in fact the organ through which the collective conscience of a community is imposed upon its members, constraining each to subordinate his private good to that of all, and enabling all to sacrifice their present good to the welfare of those that follow them. The interest of each individual is concerned with the present or the immediate future: of the distant future government is the sole trustee, and, properly to discharge that trust, its agents should be men who can view with a single eye the duties committed to them. But if those agents are primarily responsible to a company whose business it is to earn dividends for its shareholders within a limited time, they are likely to find themselves sooner or later in a false position. And in actual practice the officials of chartered companies are often faced by a conflict of duties, for the measures that best serve the interest of their shareholders cannot always be those which are best for the countries they rule. Would any one, for instance, dare to assert that the interests of the company which was formed to realize the natural resources of Nigeria, and was formerly responsible for its administration, were always identical with those of the present and future inhabitants? Admirable

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work has been done by chartered companies in laying the foundations of law and order where the Imperial government was not yet ready for the task. Seldom have natives been governed with greater humanity than they now are in Northern Rhodesia. The defects of the system have often been neutralized by a more than commercial enthusiasm for doing things well, by the watchful supervision of the supreme government, or by a reasonable expectation that that government will take over the administration and reimburse the shareholders for the expenditure incurred. The genius of Englishmen for makeshifts is one of the secrets of their practical success. The defect of that quality lies in their frequent neglect to replace the makeshift before its inherent weakness has endangered the whole structure of government. No single expedient has done more to facilitate the growth of the British Commonwealth than the free hand given at various times to chartered companies. Nor is there any valid objection to the practice, if provision is made in time to put in their place an authority which can view the task entrusted to it with a single eye to the benefit of the country it controls.

Inclusion  
of India  
in the  
British  
Common-  
wealth.

The British East India Company was the first and by far the most important example of this method of administering a subject race. The rivalries, conflicts, and intrigues of Western nations carried on in the heart of Eastern society aggravated to an intense degree disorders which, though favourable to plunder and exploitation in all their forms, were fatal to the growth of a genuine commerce. The London directorate of the British East India Company and the best of their agents in India really desired legitimate trade, and in order to secure it were gradually forced to establish some kind of order for themselves. In doing so they developed a government, and the British Government, from which their

powers were derived, was obliged to watch and control the experiment. That control was gradually strengthened until at length the Company was expropriated and its charter cancelled. In this way the British Commonwealth, except in the tiny areas left as a matter of sentiment to Portugal and France, assumed an unlimited authority over the relations of all the people of India to each other; and in doing so it also became responsible for their relations not only with other parts of the Empire but with the rest of the world. The Indians thus became subjects of the British Crown. But by this time the sovereignty had passed once for all from the Crown to Parliament, or rather to the voters who elect it—to the citizens, that is to say, recognized by law as qualified to choose representatives for the purpose of administering and changing the law. It is they, not the King, Cabinet, or Parliament, who are the mainspring of government in the United Kingdom, and it is essential to the present inquiry that no legal formula or rhetorical phrase should be suffered to obscure the fact that they are also the actual as well as the legal mainspring of government in India, as in all the dependencies of the British Crown. It is they who are responsible for adjusting the relations of a vast portion of the East with the West. The allegiance of the people of the United Kingdom and of all its dependencies is due to the same paramount authority. All of them are citizens of one comprehensive state, and that a state in which autocracy has been finally discarded and government consciously based on the principle of the commonwealth. However despotic the power of the Viceroy, and however prone the Oriental to regard such power as evidence of divine authority, that power is in fact derived from the British Parliament, not by virtue of its sovereignty over the United Kingdom, still less by

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virtue of its sovereignty over India, but by virtue of its sovereignty over the greater state of which both are integral parts. Its authority rests on the duty of the British and Indian peoples to see to it that both may fare better rather than worse by reason of their mutual intercourse. The responsibility for effecting this object must long continue to rest with the European community, merely because in realization of that duty, as well as in fitness to discharge it, the European community is far in advance of the Asiatic. These things are a matter of degree, and must be gauged by actual as well as by ideal standards. A glance at the attitude of Turkish or other Oriental rulers towards their dependencies will suggest that, wanting as the British have been, and still are, in a due sense of their responsibility to India, the sense is there. It is strong enough to secure that in most respects the government of India shall be determined by Indian and not by British interests so far as its purely domestic affairs are concerned, and in Imperial matters by Imperial interests. It is idle to assert that the vast mass of Indians have as yet had time to rise to a correlative sense of responsibility in Indian affairs, still less in those of the general Commonwealth of which India is a part.<sup>1</sup> The

<sup>1</sup> These words have been left to stand as they were first printed in 1913. The devotion of India to the Imperial Commonwealth is not the least remarkable of the revelations brought about by a war which threatens its existence, a revelation no less surprising, perhaps, to Indians themselves than to their British fellow-citizens. The following extract from a poem by a distinguished Judge, Nawab Nizamut Jung of the High Court of Hyderabad, printed in the *Times* of October 2, 1914, with reference to the landing of the Indian contingent at Marseilles, is a fine expression of the value which Indians have come to attach to their citizenship in a world-state greater even than India itself :—

Though weak our hands, which fain would clasp  
The warrior's sword with warrior's grasp  
On Victory's field ;  
Yet turn, O mighty Mother ! turn  
Unto the million hearts that burn  
To be thy shield !

principle of that Commonwealth rests upon mutual responsibility, but such responsibility is seldom distributed equally. It rests with those that have more knowledge rather than with those that have less, on the strong rather than the weak. Power must ever go hand in hand with responsibility. The ultimate sovereignty of the general Commonwealth has not been extended to include the people of India, for no other reason than this, that if it were, government itself would cease. Of all tyrannies the worst is anarchy, the one in which no visible authority can be held responsible for wrong done.<sup>1</sup> The British people have included communities drawn from every level of human society within the circle of one comprehensive commonwealth, without, like the Romans, destroying its character as such; and in doing so have done more than Rome itself towards solving the most fundamental of human problems.

In noting this obvious fact there is no suggestion that the British, any more than the Greeks or Romans, deliberately addressed themselves to the task of establishing an equilibrium between Europe, Asia, and the primitive races of mankind. 'One reason why British aims in India have never been

The  
motives  
and  
character  
of the  
British  
dominion  
in India.

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Thine equal justice, mercy, grace,  
Have made a distant alien race  
A part of thee!  
'Twas thine to bid their souls rejoice,  
When first they heard the living voice  
Of liberty!

Unmindful of their ancient name,  
And lost to Honour, Glory, Fame,  
And sunk in strife  
Thou found'st them, whom thy touch hath made  
Men, and to whom thy breath conveyed  
A nobler life!

They whom thy love hath guarded long,  
They, whom thy care hath rendered strong  
In love and faith,  
Their heart-strings round thy heart entwined;  
They are, they ever will be thine,  
In life—in death!

<sup>1</sup> See Note A at end of this chapter, p. 222.

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reduced to precise formulæ is that they were involuntary in their inception and very gradual in their growth. No one who has studied history will dream of contending for a moment that the British went to India intent upon the moral and material regeneration of its inhabitants. The pioneers were not even inflamed by the proselytizing zeal which formed one-half of the dual motives of the Portuguese. They slowly assumed the task of administration because they found it imperative for the development and stability of their trade. They drove out their European competitors, they upset inefficient indigenous administrations, they made and unmade dynasties, from the same compelling reason. They extended their rule because every fresh conquest confronted them with new difficulties and new menaces upon their frontiers. Nothing was more unmethodical, or more automatic and inevitable, than the British conquest of India. . . . Yet, though there is little substantial evidence of high initial moral purpose of a far-reaching kind, there can be no doubt that it existed in varying and often obscure forms almost from the very beginning. In a race with the traditions and the ideals held by the English it was bound to be early manifested, and to impart some infusion of unselfish beneficence into their acts. The time came at last when it grew very rapidly, until in the end it became a dominating consideration. The annexation of Oudh would never have been undertaken if Oudh had been humanely governed. The conquest of the Punjab would never have been entered upon if the death of Ranjit Singh had not plunged the province into a welter of dismal strife. The character of the English counted for more in the long run than the material purpose which first took them to India, and they committed themselves, almost without realizing it, to a task the full



magnitude of which is only now being perceived. . . . The real fact is, of course, that Great Britain has never held India solely by the sword, but also by the acquiescence, sometimes expressed, generally tacit, of the Indian peoples. If that acquiescence were ever withdrawn, the 75,000 white troops upon whom in the last emergency we must rely could not long uphold British rule unaided.'<sup>1</sup>

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The force of this last observation will be realized more vividly if the reader will refer to Plate III. and note the tiny square which represents the European civil and military population resident in India. The statement is no less applicable to the other dependencies in which by the same process the Commonwealth has taken upon itself, in addition, the guardianship of some 56,000,000 natives of Asia, Africa, America, and Oceana. Popular maps of the world serve to disguise the magnitude of this responsibility, because, as explained on Plate II., they exaggerate the area of territory in proportion to its distance from the equator, and minimize by comparison the area of the densely peopled tropics where for the most part these races live. But the fundamental problems of politics cannot be seen in their true proportions so long as they are measured in miles rather than men. Plate IV. is designed to give these measurements their real relative values, but while reading the following pages the student should keep Plate VIII. spread out before him. In round numbers the total population of the world may be taken at about 1,721,000,000.<sup>2</sup> The native populations of Asia, Africa, America, and Oceana represent about 1,164,000,000, or more than two-thirds of the whole. Between the races which go to make up this figure there is hardly any feature

The  
measure  
of British  
responsi-  
bility.

<sup>1</sup> *India and the Durbar*, reprint from the *Times*, pp. 53, 54, 69.

<sup>2</sup> As stated in the note facing page 1 these figures required to be modified in the light of more recent estimates of the population of China. The modifications, however, would rather strengthen the argument.

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which they share in common. Some, as in India and Egypt, have civilizations older than that of Europe, and differ from the savage races more than they differ from the European. But in this one feature all are alike, that their social systems begin to crumble the moment they come into contact with European civilization. Asia, Africa, America, and Oceania have, as compared with Europe, marked time during the long march of history. Europe has developed to an exceptional degree the faculty of change and growth. Her peoples are the active element in human society, and it is impossible for them to touch or mix with any of the passive elements without deranging their structure. The moment the enterprise initiated by Henry the Navigator brought the various continents into touch with each other, the question arose how far the passive and stationary peoples would be able to readjust themselves to the sudden change produced by contact with Europe. With some, of course, the disintegrating action has been more rapid than with others; but the only important race of non-European descent which has yet shown signs of innate capacity to control and keep pace with it is Japan, and it is still too early to declare her capacity proved. Assuming it for the moment, however, and deducting her population of 69,000,000, there remain some 1,095,000,000 human beings upon whom Europe has had, and is still having, a profoundly disturbing effect. Of these the people of China have been least susceptible to its action, and for obvious reasons. They are one race inhabiting one vast empire. No coasts are more remote from Europe than those of China, and, except along the banks of its mighty rivers, Europeans have permeated its vast interior but little. The order maintained by England in India has helped to delay the process of disintegration in China. Since however, European civilization has taken permanent

root on the opposite coast of the Pacific, and Russia has brought China into contact with Europe by the Siberian Railway, the disintegration of its society has proceeded at a headlong pace, and it yet remains to be seen whether a native government will succeed in controlling it. If not, the problem of regulating the relations of 434,000,000 Chinese with the other three-quarters of mankind may set the world by the ears before it is solved. In addition to the great Mongolian races there are about 67,000,000 people living in states which may be classed as non-European, and independent of European control.<sup>1</sup> These states, together with China and Japan, contain about 570,000,000 souls. The remaining non-European races may be put at 594,000,000. Upon most of these the disturbing influence of Europe began to act long before it made itself felt in China, and the effects were such that the peoples of Europe have become directly responsible for their government. But in respect of 373,000,000—more than three-fifths of this balance, nearly one-third of the non-European races, and much more than one-fifth of human society—the responsibility has been assumed by the government of the British Commonwealth.

Of this stupendous total, 312,000,000, or nearly five-sixths, are natives of India, which is the part of Asia most readily accessible to ships approaching it from Europe by the Cape route. Its inhabitants are as diverse as those of China are uniform, and owing to the peninsular shape of the country are comparatively easy to reach from the coast. When Vasco da Gama had opened the way there, India was quickly overrun by European adventurers in search of wealth, armed with the knowledge, weapons,

Causes  
leading to  
annexa-  
tion of  
depend-  
encies by  
European  
states.

<sup>1</sup> Turkey in Asia, 18,000,000; Afghanistan, 5,900,000; Persia, 9,500,000; Siam, 6,250,000; Nepal, 5,000,000; Abyssinia, 8,000,000; Liberia, 1,500,000; Central American Republics, 5,010,000; Colombia, 4,320,000; Ecuador, 1,500,000; Haiti, 2,020,000. Total, 67,000,000.

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and material resources of Europe. But they left behind them the restraints which their civilization imposes at home. In a non-European society it is the most unscrupulous and ruthless Europeans who amass wealth with the greatest ease and rapidity, and they cannot do otherwise than bring anarchy in their train. Of necessity they debauch, not only the society they exploit, but themselves, and their demoralization reacts upon the civilization to which they belong. When once the seas were opened no power on earth could stop the West from trading with the East. Trade relations were inevitable; but if those were to be the only relations, it had been better for the world if Henry the Navigator had never lived, for his achievements would have proved the greatest disaster that ever befell the races of mankind. Their only salvation was for Europe to control these trade relations, and to do that it was necessary for Europe to control the countries in which they existed. But Europe as such possessed no single organ of control. Such organs as it possessed were the governments of its various states, and therefore it was essential that one or other of them should assume the responsibility of control. It was they and they only that were competent to deal with the task. From the narrative in this chapter it is clear that a desire to protect the native races was not the motive of the empires successively created by Portugal, Spain, Holland, France, and Britain. Some of the forces which impelled them are admirably illustrated by the events which in our own time led to the occupation of the Philippines by the United States. Like India, South Africa, and America in the eighteenth century, these islands were a pawn in the struggle between two European races, in the course of which they were captured by the American fleets. The Federal Government

announced its intention of granting the natives their independence as soon as possible. To close the islands, however, to 'development' was not practical politics, and Americans were perforce admitted to business relations with the inhabitants. Capital was invested and legitimate industries established on the assumption that the chaos which had reigned under Spanish rule was to cease. But seeing as yet no prospect of law and order under a native administration, the American Government has found itself unable to withdraw. For while anarchy stifles legitimate commerce between European and native races, it opens the door to every kind of iniquitous traffic, and sets a premium on cruelty and corruption. In the pursuit of wealth righteousness pays only in so far as contracts are enforceable and justice clean.<sup>1</sup>

This modern example will serve to explain the new conditions brought about in the other continents by mere contact with Europe, and why they led to extensive annexations on the part of its governments. Most, or indeed all of them, abused the powers they assumed in a greater or less degree, and the record of these abuses has been allowed to obscure the far more terrible consequences which have followed the relations of non-European communities with Western adventurers, in cases where the natives have been left to their uncovenanted mercies. Such states have failed in their task in so far as commercial interests have dominated them, and they have succeeded in so far as they have held themselves above and outside them. When Leopold, to whose personal rule Europe entrusted territories in tropical Africa as large as Western Europe, associated his government with a gang of speculators, there opened a tragedy scarcely paralleled in all the centuries which followed the

Practical  
necessity  
of these  
annexa-  
tions.

<sup>1</sup> See Note B at end of this chapter, pp. 223, 224, 226.

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discoveries of Columbus and Vasco da Gama. The natives who perished by hunger, massacre, and mutilation, that the king and his satellites might reap the wealth of their forests, are reckoned in millions. No other remedy could be devised than that a civilized government, that is to say, the government of Belgium itself, should assume responsibility for the administration of the Congo. Once more the rubber tragedy is repeating itself in Putumayo, and again no effective remedy is in sight unless Peru can be made responsible for the effective administration of the district. In Egypt, Morocco, Swaziland, New Guinea, Samoa, and Fiji, the same story has been repeated. The institutions of native society are powerless to resist the influences which Europeans in search of wealth bring to bear on them. The corruption they engender threatens to infect the world beyond, until at last it awakens both the conscience and the fears of Europe, and it is recognized that some European state must be made responsible for enforcing justice between man and man. Nor will any thoughtful person deny that it is for the more advanced civilization to enforce justice between its own children and the weaker races of the other continents. But it is too little recognized that such work can only be done effectively by a state, or that for a civilized state to enforce justice in a native territory means annexation, by whatever diplomatic fiction the reality of Empire may be disguised.<sup>1</sup>

Magnitude  
of respon-  
sibilities  
assumed  
by British  
Govern-  
ment.

Incomparably the heaviest share of this responsibility has fallen on the British Commonwealth, which is now responsible for the peace, order, and government of some 373,000,000 of human beings, drawn from races other than those of Europe. The magnitude of the function can be realized by imagining the result if the ability of the Imperial Government

to discharge it were destroyed. Suppose that India with its manifold religions and races, Ceylon, the Straits Settlements, Egypt,<sup>1</sup> East Africa, and Nigeria—not to mention a multitude of smaller native communities scattered over the face of the globe—were suddenly left exposed to the machinations of adventurers in quest of wealth, and called upon to set up for themselves governments competent to keep some sort of internal order. How many rulers could the East produce fit to control the commerce of its people with European traders? How many could be trusted to handle the loans which European financiers are ready to lend? And how many tribal chiefs would be found proof against the enterprise of adventurers in search of concessions? The history of Egypt, China, Persia, Morocco, and Swaziland in the last few decades shows all too clearly the future in store for a backward community which is left without protection against Europeans with all the material resources of their civilization behind them. It is only by calling to their aid the moral forces of civilization that the contact of Europeans with races less advanced than themselves can be rendered otherwise than disastrous to both. Those relations must be controlled; control can only be exercised by the higher civilization and never becomes effective until in some shape or form the actual responsibility of government is assumed.

As soon as the other continents were opened to Europe, the government of great parts of them by European states was inevitable. Europe had, as explained in the first two chapters, developed two varieties of civilization, one continental, the other insular. England, the nation which had produced the latter, had by reason of its insular position secured the mastery of the ocean routes in defiance

British dependencies acquired but not held by superior physical force.

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of continental Europe, and as her trade with the other continents was greater than that of all Europe, so there fell to her a lion's share of the dominion to which trade inevitably led. The secret of superior sea-power sufficiently explains why it was that England and not Spain, France, or Holland prevailed in Asia. But to the question why a state representing so small a section of Europe has retained its dominion over peoples vastly more numerous than itself it offers no key. The truth is, as stated by the writer quoted above,<sup>1</sup> that the allegiance of these myriads has not been secured by the material forces of England, but rests on the acquiescence of the subject races themselves. But the question remains why they have so acquiesced.

The relative merits of autocracies and commonwealths in the government of dependencies.

Conservatives are apt to talk as though autocracies were better adapted than commonwealths to the task of governing backward communities, because the principle of autocracy is alone intelligible to them. Radicals are apt to arrive at the same conclusion by a different road, and to speak as though the task were one which it ill befits a commonwealth to attempt.<sup>2</sup> The present inquiry is concerned with facts, and with theories only in so far as they square with them; and in this case it is indisputable that a vast proportion of the backward races when left to themselves fall into the power of irresponsible Europeans, who use that power for their own ends, to the undoing of those over whom it is used.<sup>3</sup> The only hope for these communities lies in government by Europeans responsible to civilized states, and it is important, therefore, to inquire by what kind of civilized state they are best governed. Is it, as a question of fact, by states which cling to the principle of autocracy?

<sup>1</sup> See pp. 155-7.

<sup>2</sup> See Note D at end of this chapter, p. 227.

<sup>3</sup> See Note B at end of this chapter, p. 224.



Will any one really suggest that the Indian members of the Legislative Council would after careful inquiry prefer to see their country transferred to the rule of any continental state? Does any dispassionate critic question the comparative success of British government in India, Ceylon, Egypt, the Malay States or Nigeria, or of the United States in the Philippines? It is impossible, indeed, to resist the conclusion that as a rule civilized states have succeeded in the government of dependencies in so far as the principle of the commonwealth has been realized in their own institutions. But that dependencies should prosper when ruled by a state whose principle is unintelligible to them better than under one whose principle they understand is a paradox that calls for careful examination. In reducing a native territory to submission, and in organizing an administration, an autocracy will often show greater efficiency and act more rapidly than a constitutional state.<sup>1</sup> But provided always that the paramount government is able to enforce its commands, its ultimate success will depend upon how far it maintains the balance of justice between the natives of the dependency, those of Europe, and its own officers. A government must have power over private citizens, and must also entrust the exercise of that power to officers who, owing to the defects of human nature, are liable to abuse it. To prevent such abuse is one of the standing problems of government. The difficulty is increased tenfold where the officers of government are far from the seat of sovereignty, and entrusted with powers over a race whose language and condition place almost insuperable difficulties in the way of appeal. In the absence of effective supervision their powers must tend gradually to demoralize all but the naturally upright, and even in those to foster an

<sup>1</sup> Bourne, *Spain in America*, p. 297.

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arbitrary habit of mind. The earlier essays of European states, whether continental or British, in the government of dependencies have been marked by serious abuses. British institutions themselves were menaced in the eighteenth century when Clive and his contemporary nabobs used the wealth they brought from India to control a number of seats in Parliament. But the evils of British rule in India were slight compared to those which developed in the American dependencies of Portugal and Spain. England and Holland as well as the Latin monarchies treated the natives of Africa as chattels without rights and as instruments for their own ends, and revived slavery in a form and upon a scale more cruel than any practised by the ancients. The employment of slaves on her own soil has worked the permanent ruin of Portugal. The slave trade with America was an important source of English wealth, and the philosopher John Locke did not scruple to invest in it. There is no European race which can afford to remember its first contact with the subject peoples otherwise than with shame, and attempts to assess their relative degrees of guilt are as fruitless as they are invidious. The question of real importance is how far these various states were able to purge themselves of the poison, and rise to a higher realization of their duty towards races whom they were called by the claims of their own superior civilization to protect. The fate of that civilization itself hung upon the issue.

The  
import-  
ance of  
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pendent  
review in  
maintain-  
ing a high  
standard  
of respon-  
sibility.

When the different principles underlying the various governments of Europe are examined, is it possible to say that one more than another was likely to develop a high sense of responsibility in its citizens and officers towards the native races over which they ruled? To answer this question it is first necessary to consider how in general such a sense is cultivated

in any public or private administration. It is certainly not by denying its officers the power to act except upon instructions asked and given in each individual case. The agents of a government or business who are never allowed to act on their own initiative will cease to have any. Every banker knows this, but he also knows the supreme importance of making his local managers accountable for everything they do after they have done it. If inspection and audit were relaxed or abolished the standard of responsibility throughout the departments of any great business, whether private or public, would rapidly decline. The efficacy of audit does not lie in the threat of punishment which mainly affects the feebler natures who at best only lean on the standards that others create. Fear appeals but little to the sturdier minds who create and maintain these standards. With such it is rather that inspection, and still more the prospect of inspection, induces a habit of seeing their conduct as others would see it. It provides them with a set of standards not falsified by the constant handling of daily use by which their moral weights and measures may be tested and corrected from time to time. In art the value of criticism does not depend on the artist's fear that the critic may injure the sale of his productions. In the maintenance of wholesome standards audit does for business what criticism does for art.

The principle, in truth, applies to the whole sphere of human conduct, and it is clear that in the government of dependencies the standard of responsibility will be highest where every act of government is subject to review by an independent authority. Now Dicey has shown the characteristic which distinguishes British institutions from those of the Continent to be the automatic provision of an independent review to which government is subject in all its acts. The

The rule of law and its effect in creating an independent review of acts of government in British dependencies.

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III

establishment of the liability of its officers to the jurisdiction of the same courts as administered justice to private individuals was the essential step in the creation of the British Commonwealth. The product not of the legislature, but of the courts, it was gradually extended in the ordinary course and by the same means to the dependencies which Britain annexed. Their native inhabitants were actually incorporated in the fabric of the Commonwealth by a series of legal decisions in the ordinary courts.

Fabrigas  
v. Mostyn.

The history of these decisions would be a valuable study, but one quite beyond the compass of this inquiry. It is instructive, however, to glance at one of them. The case of *Fabrigas v. Mostyn* arose in 1773, during the occupation by British forces of the Island of Minorca. The fact that the case should relate to an island inhabited by Europeans, which was only for short periods a dependency of Great Britain, in no way lessens its value as an illustration of the principle under discussion. Fabrigas, a native of Minorca, was regarded by Lieutenant-General Mostyn, the Governor, as a seditious, turbulent, and dissatisfied person, and he resolved to deport him to Spain, believing that he had a right to do so in accordance with the ancient laws of the island. Fabrigas was arrested, imprisoned, and transported to Spain without any form of trial. *An action for assault and false imprisonment was brought by Fabrigas in the Court of Common Pleas in London.* The case was heard there, and counsel in defending Governor Mostyn remarked that 'liberty' was the privilege which the English had secured for themselves by their own patriotism. But the maintenance of that liberty, which they prized above all things, depended upon their trade, and the trade of the Mediterranean depended upon the possession of Minorca by Britain. He argued that if equality

before the law, upon which Englishmen insisted for themselves, were extended to Minorca, it would be impossible to hold that dependency. With a logic which after-events proved to be unanswerable, he urged that such a doctrine would lead to the abolition of slavery in the plantations.<sup>1</sup> Arrest, imprisonment, and deportation without trial might indeed be contrary to the principles of the British constitution; but the constitution existed for the benefit of the British people, and could not be maintained if its principles were extended to the countries they annexed as necessary to that trade which was the bulwark of their own liberty. The dependencies must be enslaved in order that Britain might be free. The illegal deportation of Fabrigas was in fact to be justified as an act of state essential in the interests, not of the people of the British Empire, but only of the people of Great Britain. The people of the dependencies were to be considered not as ends in themselves but as a means to the ends of the dominant race. It was in essence the very doctrine applied by the Athenians to another Mediterranean island in the Peloponnesian War—the claim of the strong to dominate the weak for their own safety merely by virtue of their superior strength.<sup>2</sup>

Mr. Justice Gould, who heard the case, left it to the jury to say ‘whether the plaintiff’s behaviour was such as to afford a just conclusion that he was about to stir up sedition and mutiny in the garrison, or whether he meant no more than earnestly to press his suit and to endeavour to obtain redress for what seemed to him to be a grievance.’<sup>3</sup> If they thought that the latter was the case the Judge informed the

The judgment and its effect in extending to natives of dependencies the status of citizenship in the Commonwealth.

<sup>1</sup> See p. 231.

<sup>2</sup> See note E at end of this chapter, p. 230.

<sup>3</sup> Howell, *State Trials*, xx. p. 174.

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jury that the plaintiff was entitled to recover in the action. The jury returned a verdict for the plaintiff with £3000 damages. An appeal by General Mostyn for a new trial was heard by the whole court and refused. Thereupon Governor Mostyn brought a writ of error in the King's Bench; but the judgment of the Court of Common Pleas was confirmed and the following remarks were delivered by Lord Mansfield upon the legal responsibility of a governor:—‘To make questions upon matters of settled law, where there have been a number of actions determined, which it never entered into a man's head to dispute—to lay down in an English court of justice such monstrous propositions as that a governor, acting by virtue of letters patent under the great seal, can do what he pleases; that he is accountable only to God and his own conscience—and to maintain here that every governor in every place can act absolutely; that he may spoil, plunder, affect their bodies and their liberty, and is accountable to nobody—is a doctrine not to be maintained; for if he is not accountable in this court, he is accountable nowhere. The king in council has no jurisdiction of this matter; they cannot do it in any shape; they cannot give damages, they cannot give reparation, they cannot punish, they cannot hold plea in any way. Wherever complaints have been before the king in council, it has been with a view to remove the governor; it has been with a view to take the commission from him which he held at the pleasure of the crown. But suppose he holds nothing of the crown, suppose his government is at an end, and that he is in England, they have no jurisdiction to make reparation to the party injured; they have no jurisdiction to punish in any shape the man that has committed the injury: how can the arguments be supported, that, in an empire so extended as this, every governor

in every colony and every province belonging to the crown of Great Britain, shall be absolutely despotic, and can be no more called in question than the king of France? and this after there have been multitudes of actions in all our memories against governors, and nobody has been ingenious enough to whisper them, that they were not amenable.’<sup>1</sup> In these momentous words there was once for all secured to the native of a dependency the same access to the ordinary courts as a native of Britain. It was there and there only that any cause at issue between him and the government or its representatives was to be tried.

To appreciate fully the significance of the case it is necessary to consider what remedy would have been open to Fabrigas if he had been banished by a French governor while the island was annexed to that power. The following remarks of counsel for General Mostyn throw a flood of light on the matter: ‘Do not be astonished, gentlemen, nor let it fright you, when I tell you, that the governor has an absolute right to do it, and is accountable to nobody but the privy-council. The government of that island is, in many respects, an arbitrary government, and as despotic, in many instances, as any of the governments in Asia, particularly in the part now in question.’<sup>2</sup> The case would have been one of *droit administratif*, and the civil courts of France would have been closed to Fabrigas. He would have had to draw the attention of the French king or his ministers to his complaint against their own officer. Had he been fortunate enough to get access to them and to convince them that there was a *prima facie* case for believing that the royal representative had abused his powers, the case would then have been heard by an administrative court which in its con-

Position of  
Fabrigas  
in similar  
circum-  
stances  
under  
French  
rule.

<sup>1</sup> Howell, *State Trials*, xx. p. 231.

<sup>2</sup> *Ibid.* p. 114.

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Gradual  
assertion  
of the rule  
of law  
through-  
out the  
British  
dominions.

stitution would have resembled a court-martial rather than an ordinary court of law. His suit would not have been heard by a jury of civilians and a judge independent of the administration, but by some board of naval, military, or civil officials, before whom the plea that the principles of civil law must yield to administrative necessity would have been urged by the Governor with every prospect of success.

It was thus the rule of law, gradually asserting itself through the decisions of the ordinary courts, which prevented the British, as in the struggle for existence they extended their dominions, from lapsing into principles the negation of those which underlie their constitution. The legal habits springing from the earliest traditions of the race and confirmed centuries before by the vigour of certain kings in enforcing the judgments of their courts, and especially by the excellence of the procedure devised by Edward I., restrained them in their hour of danger and temptation from diverging down the broad and easy road which led the Athenians to destruction. It is far from the truth, however, that the rule of law prevailed always and everywhere throughout the dominions of the British Commonwealth. There were serious gaps in it: one appeared in the closing years of the eighteenth century in Ireland; slavery was another. But the rule of law, instead of contracting, steadily extended the area of its operation and continued to assert itself until the gaps were closed. The essence of slavery is that the slave is not regarded as an end in himself but merely as a means to the well-being of his master, and it means that he stands outside the laws which regulate the relations between one citizen and another. Long before the institution itself was formally abolished, legal rights were gradually given one by one to the slave, some by legislative enactment and some by



decisions of the courts, till at last the foundations of the servile status were undermined.

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It is, of course, possible to point to more than one reason why extensive and populous dependencies acquiesced in the rule of a country so small and distant as Britain. The control of its executive by Parliament, and the public discussion of its policy there, have gone far towards securing that that policy would bear discussion. But the parliamentary system is itself the product of the rule of law. Still more perhaps was due to the peculiar temper of officials educated in a country where a greater importance was attached to individual rights than anywhere on the Continent. But this characteristic is itself the product of the system rather than of the race, and there is no reason to suppose that Austrians bred in England would not acquire it to the same degree, or that Englishmen bred in Austria would not be as arbitrary in their temper as the Austrians themselves. The British Commonwealth and the type of citizen it has produced are alike the results of the rule of law which must, therefore, be recognized as the ultimate reason why native races have on the whole fared better under British rule than any other. That so vast a proportion of them were brought under it was due to the supremacy of Britain at sea. But that these myriads should have acquiesced in a dominion which so small a country could never have kept inviolate if they had not, is due to the essential quality of its institutions.

British success in governing dependencies attributable not to the race but to its institutions.

If, then, there are populous communities which, having to be governed from Europe, fare best under states which have themselves best realized the principle of the commonwealth, are such states to be urged to avoid the task? Does the cause of freedom demand that that portion of humanity which cannot govern itself should be left to be ruled by the civilized states

The doctrine that commonwealths should avoid empire examined.

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III

that least understand what freedom means? Is this really a task which the citizens of a commonwealth should blush to touch, should if possible avoid touching, or having touched, should seek to abandon?<sup>1</sup> Such an attitude is largely due to a wholesome recognition of the fact that no race can rule one weaker than itself without being exposed to fearful temptations, and that, in doing so, none has fully risen to the trust imposed upon it. But is it to be recognized as a principle of private conduct that men who value their own virtue are to refuse all trusts in order to avoid the temptations to which trustees are notoriously exposed? What virtue in a commonwealth is this that shrinks from the tasks that most need to be done—that it is most fitted to do? Surely but ‘a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary, but slinks out of the race where the immortal garland is to be run for, not without dust and heat.’<sup>2</sup>

Paradox  
of the  
British  
Common-  
wealth  
when  
extended  
to non-  
European  
races.

The story is told that the Indian government once disputed the right claimed by a native community over the lands it cultivated, and the Supreme Court to which the case was eventually carried decided it in favour of the government. The tribe was a primitive one and its members may well have assumed in their disappointment that the government had itself determined the case in its own favour. Their legal advisers, however, decided to carry the case from the Indian courts to the Judicial Committee of the Privy Council, with the result that the decision was reversed in favour of the tribesmen, who suddenly found all the rights for which they had contended restored by some invisible authority, whose nature they could not apprehend and before which the Viceroy himself unquestioningly bowed.

<sup>1</sup> See Note D at end of this chapter, p. 228.

<sup>2</sup> Milton, *Areopagitica*, p. 45.

After the manner of primitive humanity they flew to the conclusion that this power, mysterious as it was beneficent, must be divine, and the Judicial Committee of the Privy Council became the object of religious ceremonies amongst them. The story aptly illustrates the paradox of the British Commonwealth. It is based upon principles which are unintelligible to the majority of its subjects. Ultimately its power rests upon a sufficient realization by those who wield it of the civic duty of man to man. That sense of mutual duty has been developed sufficiently, not only to convert the English monarchy into a commonwealth, but to render that commonwealth the greatest power in the Eastern world. To the Oriental power is an evidence of divine authority. Thus far he believes (and believes rightly) that power rests on the duty of man to God. But he has yet to rise to the conception that his duty to his neighbour is so bound up with it that he can only fulfil the one by discharging the other. The principle of autocracy will yield to that of the commonwealth in so far as this conception of duty is realized in the field of practical politics.<sup>1</sup> But how far a commonwealth is capable of extension will depend upon the answer which its citizens give to the eternal question 'Who is my neighbour?' By the Greek it was limited to those who lived in or near the same city as himself; by the European, till close upon modern times, to those of his own race; by the American of to-day, to those of his own level of civilization. But in so far as men rise to the conception that the weak who stand in need of their protection are their neighbours by reason of that need, so far will commonwealths transcend the boundaries of locality, race, and civilization which men in the hardness of their hearts and the blindness of their eyes have

<sup>1</sup> See Note A at end of this chapter, p. 222.

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Delicate  
nature of  
the task  
assumed  
by the  
Common-  
wealth and  
need of  
time for its  
accom-  
plishment.

sought to impose on their continuous expansion. Such a conception faintly dawning in the hearts of a dominant race has rendered possible this stupendous Commonwealth embracing one quarter of mankind and including every degree of civilization and barbarism.

The Oriental feels the reality of its power, and in accordance with immemorial habit regards it as divine and obeys it as such. But were some questioning spirit suddenly to destroy the divinity which hedges the British throne in India, order would quickly yield to anarchy. Yet as surely as day follows the night the time must come when, as knowledge spreads in India, the aureole which envelops and sanctions its authority will be dispelled. A despotic government might long have closed India to Western ideas. But a commonwealth is a living thing. It cannot suffer any part of itself to remain inert. To live it must move, and move in every limb. It must quicken with the principle of its own vitality every substance that it incorporates in its system, and though it must control and guide the process, it must not resist it. Under British rule Western ideas will continue to penetrate and disturb Oriental society, and whether the new spirit ends in anarchy or leads to the establishment of a higher order depends upon how far the millions of India can be raised to a fuller and more rational conception of the ultimate foundations upon which the duty of obedience to government rests. Some beginning of representative institutions has been made; but their further development will depend upon how far and how fast Indians rise to a sense of their duty to their fellow-citizens, and realize it in the practice of daily life. The work which the British Commonwealth has to do for them includes that which Rome did for the peoples of Europe; but it includes much

more. It is, in its nature, far more delicate, and if it is to last it needs a much longer period in which to confirm its results. Had Caesar and Augustus never lived, had Rome perished at the Christian era and Europe then reverted to anarchy, the world would have lost all that it has inherited from Greece and Rome, because the principles for which they stood would never have become rooted in the habits of any important section of mankind. But Rome's work was easier and more quickly done because the ancestors of modern Europeans were more primitive and more plastic than the peoples of the East. In Asia the British Commonwealth has to deal with the rigid and deeply rooted traditions of a civilization far more ancient than its own. Were the British Commonwealth to be dissolved in the course of the next century there would follow a period of world-wide cataclysm, more terrible than any which occurred in the centuries after the opening of the seas. Before the subject races it now includes could change masters, a struggle would ensue in the course of which the habits of law and order which the British Commonwealth is planting in India would perish as corn in the blade when trampled beneath the feet of contending hosts. The work done would be but a tale that is told, and its effect on the future not more than that of the moral to which it points. It needs for fruition not years nor decades but centuries, unless it is to perish as a harvest that has never been ripened and reaped. This project of a commonwealth is the noblest enterprise yet conceived in the cause of liberty, for it has played a part greater than any before it in joining together without binding in chains the divers families of mankind. Never before was known such an element of stability as that which it gives to the entire fabric of human society. But to maintain it the project must be carried to its issue,

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III

a work for which much time is needed, a strength growing with the burden of the task, an understanding deeper and an aim higher than have ever been brought to bear on it in the past.

## III

## THE OPENING OF THE SEAS : ITS EFFECT IN THE WEST

Peculiar  
character-  
istics  
which  
have  
enabled  
so small  
a country  
as Britain  
to carry  
such vast  
responsi-  
bilities.

The English Commonwealth was thus led by the opening of the seas in the sixteenth century to assume responsibilities destined to become greater than any which have yet rested on the shoulders of a single state. Hardly any commensurate area in the world is capable of carrying a larger population than the British Isles, because, as may be seen from Plate IX., their position makes them for purposes of commerce and manufacture the centre of the world. The exact centre of the land hemisphere is at  $47\frac{1}{4}$  N.,  $2\frac{1}{2}$  W., a point on the sea just outside the mouth of the Loire. For ships coming from the south and west the coasts of Britain are scarcely less central. Its numerous harbours are singularly convenient for maritime trade, and the very smallness of the islands facilitates transport by means of coasting vessels between its various centres of commerce and industry. It contains, moreover, deposits of excellent coal, large enough to furnish more than a quarter of the world's present supply. Nature has in fact made this little territory the best place in the world for working and combining materials collected from all the continents into goods for redistribution to all their inhabitants. Whether as an emporium or a centre of manufacture, the natural advantage of these islands is unique.

Nor are they dependent upon their own soil for the support of the people engaged in these occupations, because a very large part of their food is brought to them by ships returning from oversea. When the oceans were first opened to traffic the English population numbered about 3,000,000, and Englishmen of that age can no more have realized how large a population their island could carry than they can have foreseen the load which their little commonwealth was destined to take upon itself. It is this, indeed, which has hitherto enabled so small a section of Europe to support so overwhelming a share of the burden of government created by the history of Europe as a whole.

The late Lord Salisbury advised students of foreign politics to use large maps. But it is even more important that they should also use maps drawn upon a scale small enough to enable them to compare the countries whose relations they study, and the reader should look once more at the map of the world on Plate II.<sup>1</sup> For reasons explained in the notes thereto, the Northern territories are greatly exaggerated by Mercator's Projection, so that the British Islands, when compared with countries nearer the equator, appear much larger than they really are. A correct comparison can, however, be made by glancing at the dotted rectangles which show the areas of the several countries in their true proportions. Wherever these rectangles are smaller than the coloured squares, as for example in the case of India, the population is denser than that of China, and in none of them, except Belgium, is it so dense as in the British Isles. When every allowance is made for the peculiar advantages they enjoy, a limit must sooner or later be reached in the numbers which territories with so small an area

Popula-  
tion  
of United  
Kingdom  
cannot  
hope to  
keep pace  
with  
growth of  
responsi-  
bilities  
imposed  
upon it.

<sup>1</sup> This map will be found at the end of the volume.

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III

can support. The water required for the purposes of their health and industry is but one of the factors which set bounds to the indefinite growth of an island community. As a matter of fact there now remains but one watershed of importance which has not as yet been tapped by one or other of the great cities. This, like every other restricting factor, reflects itself in the rate of wages and the cost of living; and the growing pace at which emigration flows from this densely populated country shows that it is approaching the point of saturation. Now that the empty parts of the world have all been opened to settlement, their populations will continue to increase by leaps and bounds, and in any case the inhabitants of these little islands must represent a steadily dwindling proportion of the white race, that is to say, of the governing faculty of the world. Will any one venture to assert that this diminishing section of Christendom can continue indefinitely to control the future of one-fifth of the human race? The force of this point will be better understood by reference to Plate VIII., where the relative proportions of the existing populations of the world and of the areas they severally inhabit are shown.<sup>1</sup>

Danger to  
a common-  
wealth of  
reducing  
too far  
the pro-  
portion  
of citizens  
capable  
of govern-  
ment.

The previous pages have shown how the British Commonwealth has been led to include within its bounds an enormous section of the non-European races, not because they were fit to share in its government, but for the opposite reason that contact with Europe has made them unable to govern themselves in their own primitive way. Under these conditions, inclusion in the British Commonwealth, where the rule of law was better understood and observed than by any continental state, was the best alternative open to them, and that Common-

<sup>1</sup> Plate VIII. will be found facing p. 157.



wealth has been able to admit them without, like the Republic of Rome, destroying its own character as such. The idea that the principle of the commonwealth implies universal suffrage betrays an ignorance of its real nature. That principle simply means that government rests on the duty of the citizens to each other, and is to be vested in those who are capable of setting public interests before their own. In human affairs the application of principles is always a rough business; but the fact that men rarely approach perfection in practice must not be allowed to obscure the principles upon which they should endeavour to act. The principle of the commonwealth means entrusting sovereignty to all those whose sense of duty to their fellow-citizens is strong enough to justify the trust. But if they be too few to enforce obedience the state will collapse. It is the fear of such a catastrophe which makes Americans shrink from the idea of including countries like Cuba and Mexico in the United States. But the prospect would lose many of its terrors if at the same time they could count on including the people of Canada.

Herein lies the key to the problem raised for the British Commonwealth by the opening of the seas. That stupendous revolution in human affairs was to extend its dominion over vast communities incapable, for the present at any rate, of sharing the burden of government. But its dominion was also to spread over empty continents and to implant in them the system and institutions through which that dominion was exercised. These vacant lands were to inherit the principle of the commonwealth, not that of autocracy, and receive population not only from the British Isles but to an even larger degree from continental Europe. How far were these people as they entered the circle of the commonwealth to assume their share

Consequent importance of the question whether the people of Europe in migrating to the new continents were to share in the burden of governing dependencies.

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III

in the gigantic burdens which were heaping upon it ; or were the inhabitants of the British Isles to remain for ever responsible for the equilibrium of mankind ? How far, in a word, were the new worlds to be called in to redress the balance of the old ? These questions are indeed the gist of this inquiry, and for their answer it is necessary to turn from the East to the West and to trace the results which followed the discoveries of Christopher Columbus and John Cabot. The map of North America on Plate X. is designed to illustrate the following pages and should now be unfolded.<sup>1</sup>

Coloniza-  
tion by the  
English of  
the North  
American  
coast.

- The narrative of the Western discoveries paused at the conquests of Cortes and Pizarro, and Spanish names in the South and West of the United States still show how far that nation was able to assert its claim to the exclusive possession of North America.
- 1519.
1588. When, however, by the destruction of the Armada, the Spanish monopoly of the high seas was broken, the English had already determined to put 'a byt into the anchent enymye's mouth'<sup>2</sup> by occupying some of the American mainland. Various attempts at colonization made in the reign of Elizabeth, first
1578. by Sir Humphrey Gilbert and afterwards by Sir
1585. Walter Raleigh, failed in their object. Raleigh's attempt, however, led to the formal annexation by England of part of the coast under the title of Virginia. The first real settlement was effected by the Virginia Company under a patent granted by James I. to Sir Thomas Gates and others in which the whole of North
1606. America between parallels 34 and 45 was claimed by the king, that is to say, the eastern coast from the southern boundary of North Carolina to the point which now divides the State of Maine from the Province of New Brunswick. The Royal Council of Virginia was organized for the management of this

<sup>1</sup> See especially map (c) on Plate X. at the end of this volume.

<sup>2</sup> Dale to Winwood, June 1616. Brown, *Genesis of the United States of America*, vol. ii. p. 733.

territory, which, together with certain extensions, was occupied in the course of the next 125 years by the colonies of Virginia, Massachusetts, Maryland, New Hampshire, Connecticut, Rhode Island, North Carolina, South Carolina, New York, Delaware, New Jersey, Pennsylvania, and Georgia. It must be noted, however, that the continuity of the English possessions was broken by the plantation of Dutch colonies round New Amsterdam, until they were seized by England and the name of New Amsterdam changed to New York. Henceforward, Holland, except for a moment, ceased to play any part in the struggle for North America, for her power was paralysed by the growing pressure of France on her frontiers.

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III

The French, however, had anticipated the English in securing a footing on the Northern continent, and were destined to prove the rivals with whom they had to reckon. After the discovery of Newfoundland and the coast of Canada by John Cabot the value of the fisheries in those waters was quickly realized, and in the early years of the sixteenth century fishermen from Western Europe began to frequent them. Jacques Cartier, a fisherman of St. Malo, was sent by Francis I. to explore the Gulf of St. Lawrence, and ventured as far as the present site of Montreal. But little was done to follow up the discovery till Samuel de Champlain sailed up the great river in search of furs. Presently he founded Port Royal on the present site of Annapolis and established a post at Quebec, a point whose natural strength enables its possessor to command the navigation of the St. Lawrence. To the south he discovered Lake Champlain, and, in searching the west for China, explored the lakes Huron and Ontario. Port Royal and Quebec were taken by the English, but restored to France by Charles I. Meantime, the Company of

Occupation by France of the inland waterways behind the English colonies.

1497.

1534

1535.

1603.

1605.

1608.

1613.

1629.

1632.

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1627.

1664.

1674.

1666.

1673.

1681-82.

New France was formed, under the aegis of Cardinal Richelieu, to which was granted for fifteen years a monopoly of the trade of the St. Lawrence valley. It was to settle the country with Catholics, but in thirty years it only succeeded in planting 2000 French. Its charter was cancelled and a new Company formed, which was not much more successful. The population was indeed trebled, but mainly by the energy of the French Government. Ten years later this Company was abolished, and thereafter 'New France became a royal province, with governor, intendant, etc., on the model of the provinces of France.'<sup>1</sup> The French meantime had established a mission on Lake Superior, from which two of their explorers, Joliet and Marquette, reached the headwaters of the Mississippi. Cavalier de la Salle presently descended that river to its mouth in the Gulf of Mexico and claimed the whole valley for France under the title of Louisiana. Thus, while the English were founding settlements on the Atlantic coast, the French were establishing claims in the hinterland of the English colonies to the five lakes and the two mighty rivers which rise from or near them—in fact, to the great system of waterways by which the interior of the continent might be opened to settlement. By an encircling movement from the mouth of the St. Lawrence on the north to that of the Mississippi on the south, the French had completely surrounded the English settlements along the seaboard. So long as they commanded the inland waterways the English colonies were limited in their growth to a strip down the coast which represented a fraction of the present territory of the United States. The policy of the French was to narrow this strip by advancing eastwards up the Ohio and its tributaries, and to press the English settlements back

<sup>1</sup> Wrong, *Ency. Brit.* vol. v. p. 157, 11th Ed.

towards the coast. The policy of the English was to counter this move by striking at the French communications on the St. Lawrence. In the seventeenth century no conspicuous success rewarded their efforts, and an attack on Quebec from New England was repulsed by the Canadian governor, Frontenac.

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III

1690.

Though the estuary of the St. Lawrence River was the key to the inland water system, no government in Europe could hold that key unless its communications across the Atlantic were secure. The failure of French fleets to command the Atlantic was bound to neutralize the success of French armies in America; for the system of centralization which enabled France to concentrate such powers as she had there was also fatal to their local development. In the War of the Spanish Succession Britain seized Nova Scotia, which had been held by the French under the title of Acadia. By the Peace of Utrecht, which ended the war, Nova Scotia, Newfoundland, and the territories surrounding Hudson Bay were permanently secured to the British Crown. The French, however, kept Cape Breton Island, and to replace their losses fortified at immense expense the ice-free port of Louisbourg, from which in the next war, that of the Austrian Succession, they were able to harry the trade of New England. On the proposal of Governor Shirley the colony attacked the fortress and took it, with the support of four British warships under the command of Admiral Warren. 'The achievement stands by itself as the only considerable warlike enterprise undertaken and carried through by the American colonists without the instigation, help or leadership of the mother-country, other than such assistance as Warren's ships rendered in keeping the coast clear.'<sup>1</sup> On the opposite side of the globe the French had taken Madras, and when temporary

Struggle  
between  
England  
and  
France for  
America,  
and its  
ultimate  
results.

War of the  
Spanish  
Succession  
1702-13.

War of the  
Austrian  
Succession,  
1740-48.

<sup>1</sup> Bradley, *Cambridge Modern History*, vol. vii. p. 116.

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## III

1748.

exhaustion drove both sides to negotiate for peace at Aix-la-Chapelle, it was agreed that the territories conquered by each should be handed back to their original owners. The English had decidedly the best of the exchange.<sup>1</sup> 'But the Colonies could not be expected to see things in the same light. All that they saw was that their own trouble and valour had been given in vain, and that others entered into the fruits of their success.'<sup>2</sup> The cost of the expedition, however, was repaid to the colony by England.<sup>3</sup> The ink on this treaty was scarcely dry before the French began to press on the western hinterland of Pennsylvania and Virginia. The efforts made by Dinwiddie, the Governor of Virginia, and his emissary, George Washington, to check their advance, were not supported by the colonial assemblies, and Fort Duquesne was established on the site where Pittsburg now stands. Reinforcements under Braddock were despatched by the British Government, but his defeat on the Monongahela exposed the settlers along the colonial frontiers to massacre by the Indian tribes let loose upon them by the French. Meanwhile, the English Government ejected from Nova Scotia the French inhabitants who, at the instance of the Canadian Government, had refused to recognize the sovereignty of Britain. The struggles on American soil between French and English forces, while the two countries were still formally at peace, inevitably led to the outbreak of the Seven Years' War. The British forces were worsted at almost every point till Pitt's advent to power changed the course of the struggle. Louisbourg was recaptured, and Fort Duquesne, abandoned by the French on the approach of Forbes, was re-named Pittsburg in honour of the great

The Seven  
Years'  
War,  
1756-63.

<sup>1</sup> Mahan, *Influence of Sea Power on History*, p. 277.

<sup>2</sup> Egerton, *Short History of British Colonial Policy*, p. 145.

<sup>3</sup> Bradley, *Cambridge Modern History*, vol. vii. p. 166.

minister. Quebec yielded to Wolfe, and after the surrender of Montreal, Canada was for ever severed from France by the Peace of Paris, which closed the war. The opinion of historians is divided on the question how far by that peace Britain sacrificed some of the most valuable fruits of victory. Voices were raised in favour of abandoning Canada in order to secure Guadeloupe. Some there were who perceived how far the fear of conquest by France had reconciled the English colonies to the sovereignty of the parent commonwealth. Canada, however, was retained, and as Louisiana was ceded to Spain, the dominion of France in America practically came to an end. The British had conquered the New World for their institutions, but not, as the event was to prove, for themselves. Their struggle for the right to colonize North America opened its doors to the people of Europe while closing them to the system of government for which the Continent stood, and as they poured into the mould, they took the shape which Britain had impressed on it.

How little this result was due to any foresight or purpose on the part of the English is apparent when the motives which prompted them to seek a footing in America are examined. From the language of modern diplomacy it might almost be inferred that the nations of Europe value possessions in the other continents mainly as markets for their own wares. The simpler and less industrialized society of the sixteenth century thought less of the goods which such countries would consume than of the wealth they could be made to yield, and in that age gold was looked upon as almost synonymous with wealth. Naturally their statesmen believed that what other nations gained from America would be lost to their own. Kings, captains, and merchants sent their agents from Portugal, Spain, France, Holland, and

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III

1759.

1763.

Success  
in the new  
enterprise  
of coloniz-  
ation  
dependent  
on capacity  
of those  
attempt-  
ing it to  
modify old  
ideas and  
methods  
to suit new  
conditions.

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England to gather the spoils of the West, and each fought to exclude the others. Representatives of all of them remained and took root in various parts of the new continent, and quickly there sprang into being communities which drew their vitality from its soil. They began to produce the raw materials of wealth, and to offer them in exchange for the products of civilized life which the industries of Europe alone could supply. The merchants and artificers of Europe thus came to regard their several colonies as markets which they were entitled to treat as their own preserves. The possibility that they might actually do better by opening them to the world at large had yet to be recognized, and statesmen of that age are no more to be blamed for not perceiving it than astronomers before Copernicus for assuming that this earth was the centre of the Universe. Economics had not then been conceived as a science, and the commercial conditions from which its more obvious conclusions have been drawn were still in embryo. Only in the light of experience can the principles of human society be discerned, and the best political system is that which makes it easiest for people to mark the lessons of their own experience and turn them to account. Inevitably the nations of Western Europe approached the problems of the new era under the influence of mediaeval ideas, and the failure or success of each in the novel enterprise of colonization was destined to depend upon their relative capacity for adapting their systems to conditions different from those which had produced them in Europe.

Rigidity  
of Spain  
in apply-  
ing her  
institu-  
tions to  
the New  
World.

Gold, as already noticed, was in that age identified with wealth, and a country held wealthy in so far as it contained gold. It was not without difficulty that the English East India Company got leave to export gold in limited quantities for the purchase of



Indian goods. In England, however, the immediate and obvious interest of the merchants, coupled with the national habit of leaving things to take their course, averted the more mischievous results of a false economic idea. It was otherwise with the Spaniards, whose more military habits made it easier for them to mistake gold, the natural object of plunder, for wealth. To the Spanish autocracy colonization was a political enterprise mainly undertaken with the object of obtaining gold for the state. 'To plant active and self-dependent societies in the lands which she had conquered was an ambition alien to her genius and her history. In some respects her conception of colonization was narrower than that of any other people of her time. All sought to utilize the resources of the new lands for the upbuilding of their own strength; but Spain continued to concentrate her attention on, and measure her success by, the volume of treasure transported to her from the New World. Learning little and forgetting little, though the art of colonization was being rapidly transformed, she pursued throughout these years her historic course, adding new territory by the sword, exploiting principally its mineral resources, and seeking to administer it in such a manner that it would yield an ample revenue to the Crown. . . . At Lima and Mexico the Viceroy ruled in state, endowed with absolute authority, though unable always to exercise it in the remoter parts of their vast dominions. . . . The powers possessed by the *cabildos*, or town councils, and the *consulados*, or commercial chambers, of Mexico and Lima, were too slight to enable these bodies to modify the character and spirit of so carefully organized a system of absolute government. The life of the country was quiet, even stagnant; it moved in fixed channels, and lacked the elasticity of development that often

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marks the first stages of a young society's progress. . . . It was difficult also, owing to the weakness of Spain at sea, to protect the coasts from the raids of enemies and to prevent contraband trading. But as the Spanish population was comparatively small, and the greater part lived in towns, which were generally well garrisoned, the authority of the Viceroy over their subjects was maintained unquestioned. Equally unquestioned was the submission of the colony to the mother country. This was partly a result of Spanish methods of colonization and of the attention lavished on the problem of governing dependencies. Without faith in her own offspring, Spain was more concerned to weaken than to strengthen her colonies, and precautions were redoubled to ensure their attachment to the empire. The authority of the Crown, the Church, and the nobility, the three principal agents in Spanish colonization, followed swiftly in the footsteps of the conquering generals; and the political conditions of the mother country were speedily reproduced in the colony. A despotic government, so organized that its different parts should act as a check upon each other, suspected by the Crown and suspicious of the Creole, laboured to raise a large revenue for transmission home. A wealthy Church, with numerous clergy and monastic establishments and magnificent buildings, pressed upon the productive resources of the country. The tribunal of the Inquisition, enjoying great power, sat in the capital cities, supervised conduct, and repressed heresy. A needy nobility shared out large portions of the land in huge estates. Amongst the people in general, law and custom combined to stereotype a caste division, which fixed the social position of a man and his legal rights according to the shade of colour which his skin exhibited. The mother country encouraged the antagonism which thus separated the various classes

of her subjects, and felt her authority the more secure on this account. But it was impossible to build a strong and progressive community by setting the home-born white against the native white, the white against the half-breed, the coloured man against the white man, the negro against the Indian. . . . But what was really more unfortunate for Spain was the dwindling away of her colonial trade. In its broadest features her commercial policy had not been illiberal towards her colonies. No systematic effort had been made to shackle their industrial and agricultural progress in favour of producers at home. Skilled artisans were permitted to migrate to America, and the province of Quito numbered an industrial element in its population. If the Spanish colonies were economically backward, it was their social organization and the character of their people that placed the greatest restraints on their productive powers. None the less, the manner in which the mother country conducted her commerce with her dependencies was most injurious both to herself and to them. The *Casa de Contratacion*, which administered the economic affairs of America, pushed its regulations into the minutest details. Never perhaps has a government lavished so much care only to repress the energies of its subjects and to ruin their commerce.'<sup>1</sup>

By the French Court, on the other hand, which had not as yet become so hide-bound as the Spanish autocracy, some disposition to give play to individual enterprise was shown. The funds for the Canadian settlements were first supplied by merchants, but 'an indication of an early intention on the part of the Crown to treat the colonies on imperial principles appears in the title "Viceroy," long before given to

Characteristics of autocracy reflected in French methods of colonization.

<sup>1</sup> Benian, *Cambridge Modern History*, vol. v. pp. 680, 681, 682, 683, 684. See also Note C at the end of this chapter, p. 227.

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Roberval and now again to Condé, as whose agent Champlain acted from 1612 with the title "Lieutenant-General."<sup>1</sup> After the first forty years the efforts of individual enterprise were swept aside by the state, and as Professor Wrong has observed, Canada was organized as 'a royal province, with governor, intendant, etc., on the model of the provinces of France.' 'At first it seemed likely that municipal institutions would develop. In 1663 a meeting of the *habitants* of Quebec and its *banlieu* was convoked to proceed by election to the choice of a mayor and two bailiffs. The election threatened to become a reality; whereupon the system was cancelled, and the municipal idea was rooted out from Canada. De Tracy urged Talon to avoid any "balance of authority among subjects," which might lead to a dismemberment of the community.'<sup>2</sup> At this time, when the Court was endeavouring to exterminate the Huguenots or to eject them from France, 'One of the ablest of Canadian governors, La Galissonière, seeing the feebleness of the colony compared with the vastness of its claims, advised the King to send ten thousand peasants to occupy the valley of the Ohio, and hold back the British swarm that was just then pushing its advance-guard over the Alleghanies. It needed no effort of the King to people his waste domain, not with ten thousand peasants, but with twenty times ten thousand Frenchmen of every station,—the most industrious, most instructed, most disciplined by adversity and capable of self-rule, that the country could boast.'<sup>3</sup> 'When some Huguenots made application to join the colony, Louis XIV.'s reply was that he had not chased the heretics from his kingdom in order to found a republic for them

<sup>1</sup> Bateson, *Cambridge Modern History*, vol. vii. p. 72.

<sup>2</sup> *Ibid.* vol. vii. p. 81.

<sup>3</sup> Parkman, *Montcalm and Wolfe*, vol. i. pp. 23-4.

in America.’<sup>1</sup> ‘While La Galissonière was asking for colonists, the agents of the Crown . . . were pouring volleys of musketry into Huguenot congregations, imprisoning for life those innocent of all but their faith,—the men in the galleys, the women in the pestiferous dungeons of Aigues Mortes,—hanging their ministers, kidnapping their children, and reviving, in short, the dragonnades. Now, as in the past century, many of the victims escaped to the British colonies, and became a part of them. The Huguenots would have hailed as a boon the permission to emigrate under the fleur-de-lis, and build up a Protestant France in the valleys of the West. It would have been a bane of absolutism, but a national glory; would have set bounds to English colonization, and changed the face of the continent.’<sup>2</sup> ‘The contesting forces which at this epoch were to settle the destinies of North America were numerically insignificant; and it is possible that ten thousand sturdy Huguenot settlers sent up the Mississippi at this moment might have changed the history of the world.’<sup>3</sup> ‘The opportunity was spurned. France built its best colony on a principle of exclusion, and failed; England reversed the system, and succeeded.’<sup>4</sup> As in the Spanish colonies, the system of centralization natural to a despotism checked the growth of any local sense of responsibility. ‘Canada was the prey of official jackals,—true lion’s providers, since they helped to prepare a way for the imperial beast, who, roused at last from his lethargy, was gathering his strength to seize her for his own. Honesty could not be expected from a body of men clothed with arbitrary and ill-defined powers, ruling with absolute sway an unfortunate people who had no voice in their

<sup>1</sup> Bateson, *Cambridge Modern History*, vol. vii. p. 88.

<sup>2</sup> Parkman, *Montcalm and Wolfe*, vol. i. p. 24.

<sup>3</sup> Bateson, *Cambridge Modern History*, vol. vii. p. 114.

<sup>4</sup> Parkman, *Montcalm and Wolfe*, vol. i. p. 24.

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Superior-  
ity of the  
French in  
handling  
the  
Indians.

own destinies, and answerable only to an apathetic master three thousand miles away.<sup>1</sup> When Canada was irretrievably lost to France a public inquiry in Paris brought to light the manner in which the officials had plundered the French Government and the people of the colony. Too late the King discovered that the stores which might have enabled the colony to resist Wolfe had been sold for their own profit by the intendant and his accomplices.

The French system, however, secured to their leaders a power of concentration in policy and war which almost made up for the weakness of their resources. In no direction was this advantage more marked than in the handling of native affairs, for the centralized and despotic government of Canada was able to maintain a uniform control of its own colonists in their dealings with the Indian tribes. In the English territories a dozen democracies were all handling the natives in different ways, or, to be more accurate, were failing to handle them at all or to establish any orderly relations between the two races. Here as elsewhere had begun the inevitable conflict between civilized and tribal notions of tenure. To the Indians, with their communal ideas, their hunting grounds were regarded as tribal property. What was every man's land the colonist deemed to be no man's land, of which each new-comer was free to appropriate so much as he needed for his own use. The communal system of a primitive people was ignored, and the Europeans imposed on the country their own system of individual ownership. That pathetic cry, long heard in Ireland and destined to be re-echoed wherever men bred under the individualistic laws of civilized states have invaded the communes of tribal societies, was now raised in America. 'We don't know what you Christians, English and

<sup>1</sup> Parkman, *Montcalm and Wolfe*, vol. ii. p. 33.

French, intend,' said one of the Indians. 'We are so hemmed in by you both that we have hardly a hunting-place left. In a little while, if we find a bear in a tree, there will immediately appear an owner of the land to claim the property and hinder us from killing it, by which we live. We are so perplexed between you that we hardly know what to say or think.'<sup>1</sup> The problems were such as the autocratic French government could control far better than the weak and numerous governments of the English colonies. It is never so hard for a people who have learnt how to govern themselves to mete out justice to those who have not, as where they have rooted themselves and made their home in the soil of a more backward society. It is this which accounts for the contrast between England's success in India and her failure in Ireland. In mixed societies the subject race may fare worse than under autocracies such as those which Spain and France established. In North America, however, the French and English had a direct motive for enlisting the aid of the natives against each other, and in bidding for their support the centralized French Government had a great advantage. It was only when the power of the French began visibly to fail that the majority of the Indians definitely transferred their allegiance to the other side.

This same unity of control in all the operations of war nearly enabled the French to defeat the divided councils and forces of the English who outnumbered them by more than twelve to one. Their disunion, indeed, was due to methods of colonization as diverse and casual as those of Spain and France were uniform and systematic. Visions of the fabled El Dorado and of the boundless supplies of wealth

Methods of English colonization. Its political, commercial, and religious motives.

<sup>1</sup> *New York Colonial Documents*, vi. 813, quoted by Parkman, *Montcalm and Wolfe*, vol. i. pp. 178-9.

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III

to be drawn therefrom in the form of gold had figured largely even in the mind of Raleigh. But the growth of commerce and the experience it brought suggested other and sounder reasons for securing a footing on the American continent. The Government as well as the merchants of England had begun to realize that its safety as well as material prosperity had come to depend on sea-borne traffic. They foresaw the risk of an attempt, such as Napoleon actually made two centuries later, to starve England into submission by closing the ports of Europe against her. From the Continent she drew not merely the wealth to pay for the ships that defended her shores, but also the actual materials from which they were built. Then, as in the days of Nelson, she depended on the Baltic for tar, pitch, rosin, flax, cordage, masts, yards, timber, and other naval stores.<sup>1</sup> The idea was conceived that all these stores, and many other things as well, notably wines, for which England was dependent on Southern Europe, could be drawn from America. Both these motives, political and material, find expression in the words of a pamphleteer of the time: 'We shall reare again such marchants shippes both tall and stout, as no forreine sayle that swimmes shall make them vaile or stoope, whereby to make this little northerne corner of the world the richest storehouse and staple for marchandize in all Europe.'<sup>2</sup> But that motives were at work other than those of policy or trade is evident from a prayer which appears in a contemporary pamphlet to 'That merciful and tender God who is both easie and glad to be entreated, that it would please Him to bless and water these feeble beginnings, and that as He is wonderful in all His workes, so to nourish this graine of seed that it may spread till

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, p. 23.

<sup>2</sup> *Ibid.* p. 41.



the people of this earth admire the greatnesse and seeke the shade and fruits thereof.' <sup>1</sup>

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Thus, the religious as well as the commercial feelings of the people sympathized with the national instinct to put 'a byt into the anchent enymye's mouth.' Individual enterprise was less trammelled in England than in any part of the Continent, and English adventurers were readier, even than those of Holland, to rely on their own efforts to gain their own ends. They were not so much concerned to secure active assistance from government as guarantees that it would leave them a free hand to carry through whatever they undertook. The successive patents granted by the Crown were rather of the nature of licences defining the limits within which private adventurers were free to act. As in the case of the East India Company, the sinews of the enterprise were furnished by private individuals or associations. The incorporators of the Virginia Company consisted of 56 City Companies and 659 private persons, of whom 21 were peers, 96 knights, 11 professional men, 53 captains, 28 esquires, 58 gentlemen, 110 merchants, and 282 citizens.<sup>2</sup> At least 2,000,000 square miles had been claimed by England in the patent granted to Raleigh, but of this tract not more than one-hundredth was allotted to two Corporations, one of which was the Virginia Company. For the supervision of the whole territory there was called into being a second edition of the Privy Council, styled 'The Royal Council of Virginia.'

Private  
adventure  
and inde-  
pendence  
of state  
assistance  
disting-  
uishing  
mark of  
English  
enterprise.

1606.

The freedom with which the regulations for the government of the colony in Virginia were varied in the earlier years of its existence sufficiently reveals the habit already formed by Englishmen of feeling their way little by little as experience might suggest.

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, pp. 41-2.

<sup>2</sup> *Ibid.* p. 25.

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Reproduction in New World from the outset of principles underlying the institutions of mother countries; autocracy in the colonies of France and Spain, and the spirit of the commonwealth and local control in those of England.

Spanish hostility to the settlement of Virginia and to the principle for which it stood.

In the colonies of Spain and France the institutions of autocracy reproduced themselves and crushed any faint attempts towards individual enterprise which appeared at the outset. Absolutism was ultimately fatal whether to private experiments in the practice of government or to the growth of municipal institutions. In exactly the same way the principles which underlay the institutions of the English Commonwealth began to assert themselves after the first few years. 'In 1619 . . . a new order of things was set on foot by the summoning of a popular Assembly, which met on the 30th of July of that year. Hutchinson speaks of it as "breaking out," and Professor Seeley has repeated the expression. But, in fact, it was duly summoned by Yeardley, according to the instructions which he had received from home. The Assembly was to be composed of the Governor and his Council, together with Burgesses, elected by the freemen from each plantation, each county and hundred returning two members. The Assembly was to have power to make and ordain whatsoever laws and orders should by them be thought good and profitable.'<sup>1</sup>

'That the settlement of Virginia had given great dissatisfaction to Spain is of course certain. The very valuable collection of Simanca documents first collected in Mr. Brown's *Genesis of the United States*, enables us to follow in detail the intrigues and plots of Spain against the young Colony, for the first ten years of its existence. We now recognize that a ceaseless diplomatic war was carried on by Spain against the interests of the Colony. She is found screwing up her courage to make an end, once and for all, of the intruder, but for one reason or another postponing the effort. It was hoped in Spain that

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, pp. 31-2.

the death of Prince Henry<sup>1</sup> would make the business grow cooler, while at another time, the Colony appears dying of itself. In 1613 we hear of a formal claim made to Virginia under the Papal Bull, and a hot dispute between the English ambassador and the Spanish Secretary of State. And an expedition from Lisbon to destroy the Colony was on the point of starting.

'The author of the pamphlet, "A perfect description of Virginia," published in 1649, states that "it is well known that our English plantations have had little countenances, nay, that our statesmen, when time was, had store of Gondemore's<sup>2</sup> gold to destroy and discountenance the plantation of Virginia; and he effected it in a great part, by dissolving the Company, wherein most of the nobility, gentry, corporate cities, and most merchants of England were interested and engaged; after the expense of some hundreds of thousands of pounds. For Gunde-more did affirm to his friends that he had commission from His Master to ruin that plantation. For, said he, should they thrive and go on increasing as they have done, under the government of that popular Lord of Southampton, my master's West Indies and his Mexico would shortly be visited by sea, and by land, from those planters of Virginia. And Marquis Hambleton told the Earle of Southampton that Gundemore said to King James that the Virginia Courts were but a seminarie to a seditious Parliament."'<sup>3</sup> Something more was afoot than a struggle of states for the possession of America. Behind it was a mortal conflict of principles, inevitable as soon as both were applied to a new and common sphere. The despotism of Spain instinctively felt that the active little democracy which had entered its preserve

<sup>1</sup> Elder brother of Charles I. and an enthusiast for English colonization.

<sup>2</sup> Spanish Ambassador at the Court of St. James.

<sup>3</sup> Egerton, *A Short History of British Colonial Policy*, pp. 35-6.

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was the embodiment of an ideal fatal to its own. 'In the bottom of its cold heart it was afraid,' and history has proved that its fears were just. 'Happily for the world, the misfortunes of the Colony were such as to enable the Spanish power half to delude itself into the belief that it was rather the unimportance of Virginia than its own inherent incapacity, which allowed the egg to be hatched from which was to arise a cockatrice to Spain's American Empire.'<sup>1</sup>

Failure of  
Virginia  
Company  
to select  
suitable  
colonists.

The importance of the Virginia Company lies chiefly in the fact that the English Government was led by its enterprise to make formal claim to the coast belt of North America. Where the Company failed was in finding settlers of character, and many of those sent out were described as 'unruly gallants, packed thither by their friends to escape ill-destinies.'<sup>2</sup> In order to obtain quick profits its efforts were concentrated on the planting of tobacco, and labourers were sought for the plantations without any regard to their fitness to form the nucleus of a future community. Very early in the history of chartered companies the inherent conflict between their duty to their shareholders and their duty to the 'unborn millions'<sup>3</sup> who would people their territories began to assert itself.

Causes  
which led  
to colon-  
ization of  
English  
territories  
in America  
by  
religious  
refugees.

But other forces already at work were soon to supply the material from which the real fibre of the national character was to be drawn. The English Reformation in the sixteenth century was a revolt against that spirit of uniformity which was the legacy to Europe of the Roman Empire. It was, however, but the first of many steps towards toleration in matters of religion. So far as the intentions of Government were concerned it meant that in England,

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, p. 36.

<sup>2</sup> *Ibid.* p. 30.

<sup>3</sup> Sir George Grey's favourite phrase when addressing the people of New Zealand.

church and state once for all repudiated the authority of Rome. Such a step was, of course, rendered possible by the spirit of Protestantism which had been growing amongst the lower ranks of the people from the time of Wyclif onwards. But what Henry VIII. denied to Rome, he and his successors claimed for themselves. Freedom had many battles to win before the English Government was willing to allow Englishmen the right to adopt what form of religion they chose. As the Catholic sovereigns had persecuted those who denied the authority of Rome, so their Protestant successors persecuted those who denied their own authority as heads of the English Church. But in heading the secession from Rome they had released elements of revolt against all authority in matters of faith too strong for themselves to suppress; and for more than two centuries dissenters and papists were alike the victims of official persecution.

James I. was especially zealous in asserting his claim to religious obedience, and certain nonconformists of Scrooby, near Nottingham, took refuge at Leyden from his vexatious measures, but after some eleven or twelve years it seemed better to them to move to some place where their little community would not be in danger of merging its identity and character in an alien race. 'Amongst many other inconveniences,' they considered 'how hard the Country was where we lived, how many spent their estate in it, and were forced to return for *England*, how grievous to live from under the protection of the State of *England*; how like we were to lose our language, and our name of English; how little good wee did, or were like to do to the Dutch in reforming the Sabbath; how unable there to give such education to our children, as wee our selves had received, etc.'

<sup>1</sup> A concession was obtained from the Virginia Company, and

The  
Pilgrim  
Fathers.  
Their  
resolute  
character.  
1608.

<sup>1</sup> Winslow, *Hypocrisy Unmasked*, p. 89.

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III

on the 6th September 1620, the *Mayflower* started on her famous voyage with about 120 of them on board. Through stress of weather and the unwillingness of the ship's company to carry them further, they were forced in December to land in the harbour which lies behind Cape Cod, on the coast of New England.

Within a few hours of going ashore the first party were obliged to defend themselves with firearms against an attack from Indians. Half their number died of scurvy in the first few months. 'It is not with us,' wrote their leader, 'as with other men whom small things can discourage, or small discontentments cause to wish themselves at home again.'<sup>1</sup>

Founda-  
tion in  
New  
England  
of New  
Plymouth.  
The first  
written  
constitu-  
tion.

The spot where they landed was North of the region granted to the Virginia Company, from which they held their concession, and in the territory allotted by royal charter a month before to the Plymouth Company lately established 'for the planting, ordering, ruling, and governing of New England in America.'<sup>2</sup> From it they obtained a concession in 1621, and three years later were able to purchase the rights of the Company itself. 'I shall a litle returne backe,' says their chronicler, Bradford, the second governor of the colony, 'and beginne with a combination made by them before they came a shore, being the first foundation of their governmente in this place; occasioned partly by the discontented and mutinous speeches that some of the strangers amongst them had let fall from them in the ship; That when they came a shore they would use their owne libertie; for none had power to command them, the patente they had being for Virginia, and not for New england, which belonged to an other Government, with which the Virginia Company had nothing to doe. And partly that

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, p. 42.

<sup>2</sup> *Ibid.* p. 42.

shuch an acte by them done (this their condition considered) might be as firme as any patent, and in some respects more sure.

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III

‘The forme was as followeth.

‘In the name of God, Amen. We whose names are underwritten, the loyall subjects of our dread soveraigne Lord, King James, by the grace of God, of Great Britaine, Franc, and Ireland king, defender of the faith, etc.

‘Haveing undertaken, for the glorie of God, and advancemente of the Christian faith, and honour of our king and countrie, a voyage to plant the first colonie in the Northerne parts of Virginia, doe by these presents solemnly and mutually in the presence of God, and one of another, covenant and combine our selves togeather into a civill body politick, for our better ordering and preservation and furtherance of the ends aforesaid; and by vertue hearof to enacte, constitute, and frame shuch just and equall lawes, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meete and convenient for the generall good of the Colonie, unto which we promise all due submission and obedience. In witnes whereof we have hereunder subscribed our names at Cap-Codd the 11 of November, in the year of the raigne of our soveraigne lord, King James, of England, France, and Ireland, the eighteenth, and of Scotland the fiftie fourth. Anno Dom. 1620.’<sup>1</sup>

This document has often been described as the first written constitution, and for the purpose of the present inquiry it is of interest to consider wherein consisted its efficacy as a basis for the government of New Plymouth. It is usual to describe it as a ‘compact of government,’<sup>2</sup> and in form it un-

Nature  
of the  
document  
con-  
sidered.

<sup>1</sup> Bradford, *History of Plymouth Plantation*, pp. 189-91.

<sup>2</sup> Egerton, *A Short History of British Colonial Policy*, p. 42.

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questionably was so. But if its value depended on compact, its force must have expired with those who signed it. In essence it was a confession of purpose and faith, a dedication for all time and all purposes by the founders of the community to its general interest, not only of themselves, but of all who should hereafter come within its jurisdiction. In practice its efficacy depended on a sufficient recognition by a sufficient number of colonists of their duty to uphold the government it established, whether by restraining enemies who threatened its existence from without, or by constraining to obedience those who might question its authority from within. Even in this small and heroic company there were already some, as the narrative shows, who had declared their intention of putting their own interests before those of the community, and the document originated in the determination of the others to suppress such conduct by force. There were dangers from without, moreover, to be reckoned with, and Bradford indicates that the necessity of some military organization was recognized from the outset. 'After this they chose, or rather confirmed, Mr. John Carver (a man godly and well approved amongst them) their Governour for that year. And after they had provided a place for their goods, or comone store, (which were long in unlading for want of boats, foulness of the winter weather, and sickness of divers,) and begun some small cottages for their habitation, as time would admitte, they mette and consulted of lawes and orders, both for their civill and military Governmente, as the necessitie of their condition did require, still adding therunto as urgent occasion in severall times, and as cases did require.

'In these hard and difficult beginings they found some discontents and murmurings arise amongst



some, and mutinous speeches and carriages in other; but they were soone quelled and overcome by the wisdom, patience, and just and equall carrage of things by the Gov(erno)r and better part, which clave faithfully togeather in the maine.<sup>1</sup> The narrative by its very simplicity lays bare the foundation of the state. Freeman himself might have learned from it that even a commonwealth cannot escape the necessity of constraining unwilling subjects.<sup>2</sup> States are not based on force and cannot be founded on self-interest. On the contrary, they originate in the truth that men cannot live by bread alone, together with all that that truth implies. As no state can rest on force so none can exist without using it to impose the conscience of the community upon those who repudiate its demands. If no limit can be allowed to the duty owed by the citizen to his commonwealth, that boundless duty may require him to exercise force when summoned by law to vindicate its claim.

Further settlements were made by the Puritans in New England, the most important being that of the Massachusetts Bay Company under a charter secured by John Winthrop. Thus from the original stock of English radicalism, which was destined henceforward to play so large a part in the life of the British Commonwealth, were planted communities which aspired at the outset to be virtually independent of the British connection.<sup>3</sup>

Their example was followed by Roman Catholics, who sought to find in a new country freedom from the annoyance to which they were subjected at home. One of their leaders, Lord Baltimore, obtained a charter for the colonization of Maryland, the practical

Founda-  
tion of  
further  
Puritan  
settle-  
ments at  
Massa-  
chusetts  
Bay and  
elsewhere,  
1629.

Roman  
Catholic  
settlement  
in Mary-  
land, 1632.

<sup>1</sup> Bradford, *History of Plymouth Plantation 1620-1647*, pp. 189-93.

<sup>2</sup> See Note D at end of this chapter, p. 228.

<sup>3</sup> Egerton, *A Short History of British Colonial Policy*, p. 45. See also Osgood, *The American Colonies in the Seventeenth Century*, vol. iii. p. 512, and Winthrop's *Journal*, vol. ii. p. 301.

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effect of which was to allow the exercise of the Roman Catholic religion. As the next Lord Baltimore wrote, his father 'had absolute liberty to carry over any from his Majesty's dominions willing to go. But he found very few but such as for some reason or other could not live in other places, and could not conform to the laws of England relating to religion. These declared themselves willing to plant in this province, if they might have a general toleration settled by a law, by which all, of all sorts, who professed Christianity in general might be at liberty to worship God in the manner most agreeable to their conscience without being subject to any penalties.'<sup>1</sup>

Result of toleration in English colonies in fostering their growth as contrasted with the colonies of Continental states.

In the patents granted in the last century to Gilbert and Raleigh, conformity with the Church of England had been prescribed in terms. Professor Egerton shows that Charles I., while attempting to enforce conformity in England, deliberately sanctioned the policy of leaving the American settlers to use what form of worship they chose. Nothing could better illustrate the contrast between the tendencies at work on the Continent and in England. The Inquisition planted at the outset in the Spanish colonies gnawed their vitality from within. The French Court closed Canada to the Huguenots who sought to escape its persecution. In England the very kings who contested the claims of Parliament and endeavoured to enforce conformity to the established church were fain to wink at dissent in all its forms when practised beyond the Atlantic. The traditions of the national life were too strong for them, and the consequence was that some of its more vigorous elements poured into the colonies and flourished there. After them entered kindred elements from countries which denied to the spirit of in-

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, pp. 47-8.

dependence an asylum even in their own colonies. The Huguenots shut out from Canada found freedom and safety beneath the English flag. Religious persecution there was, but it was instituted not by the English Government but by the colonists themselves and was soon extinguished by public sentiment. From Virginia the Anglicans sought to exclude dissenters. In New England the Puritans were equally hostile to Quakers and to English and Roman Catholics. The latter had their headquarters in Maryland where, however, there was a large dissenting population. At a later date Pennsylvania came into existence as the outcome of Penn's Holy Experiment. It was 'a conglomerate of creeds and races,—English, Irish, Germans, Dutch, and Swedes; Quakers, Lutherans, Presbyterians, Romanists, Moravians, and a variety of nondescript sects. The Quakers prevailed in the eastern districts; quiet, industrious, virtuous, and serenely obstinate. The Germans were strongest towards the centre of the colony, and were chiefly peasants; successful farmers, but dull, ignorant, and superstitious. Towards the west were the Irish, of whom some were Celts, always quarrelling with their German neighbors, who detested them; but the greater part were Protestants of Scotch descent, from Ulster; a vigorous border population.'<sup>1</sup>

In New York, 'the English, joined to the Dutch, the original settlers, were the dominant population; but a half-score of other languages were spoken in the province, the chief among them being that of the Huguenot French in the southern parts, and that of the Germans on the Mohawk. In religion, the province was divided between the Anglican Church, with government support and popular dislike, and numerous dissenting sects, chiefly Lutherans, In-

<sup>1</sup> Parkman, *Montcalm and Wolfe*, vol. i. pp. 33-4.

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III

dependents, Presbyterians, and members of the Dutch Reformed Church.<sup>1</sup>

The general result is summed up by Parkman in the following words: 'The thirteen British colonies were alike, insomuch as they all had representative governments, and a basis of English law. But the differences among them were great. Some were purely English; others were made up of various races, though the Anglo-Saxon was always predominant. Some had one prevailing religious creed; others had many creeds. Some had charters, and some had not. In most cases the governor was appointed by the Crown; in Pennsylvania and Maryland he was appointed by a feudal proprietor, and in Connecticut and Rhode Island he was chosen by the people. The differences of disposition and character were still greater than those of form.'<sup>2</sup>

' . . . The attitude of these various colonies towards each other is hardly conceivable to an American of the present time. They had no political tie except a common allegiance to the British Crown. Communication between them was difficult and slow, by rough roads traced often through primeval forests. Between some of them there was less of sympathy than of jealousy kindled by conflicting interests or perpetual disputes concerning boundaries. The patriotism of the colonist was bounded by the lines of his government, except in the compact and kindred colonies of New England, which were socially united, though politically distinct. The country of the New Yorker was New York, and the country of the Virginian was Virginia. The New England colonies had once confederated; but, kindred as they were, they had long ago dropped apart. William Penn proposed a plan of colonial union wholly fruitless.

<sup>1</sup> Parkman, *Montcalm and Wolfe*, vol. i. pp. 34-5.

<sup>2</sup> *Ibid.* vol. i. pp. 27-8.

James II. tried to unite all the northern colonies under one government; but the attempt came to naught. Each stood aloof, jealously independent. At rare intervals, under the pressure of an emergency, some of them would try to act in concert; and, except in New England, the results had been most discouraging. Nor was it this segregation only that unfitted them for war. They were all subject to popular legislatures, through whom alone money and men could be raised; and these elective bodies were sometimes factious and selfish, and not always either far-sighted or reasonable. Moreover, they were in a state of ceaseless friction with their governors, who represented the King, or, what was worse, the feudal proprietary. These disputes, though varying in intensity, were found everywhere except in the two small colonies which chose their own governors; and they were premonitions of the movement towards independence which ended in the war of Revolution. The occasion of difference mattered little. Active or latent, the quarrel was always present. In New York it turned on a question of the governor's salary; in Pennsylvania on the taxation of the proprietary estates; in Virginia on a fee exacted for the issue of land patents. It was sure to arise whenever some public crisis gave the representatives of the people an opportunity of extorting concessions from the representative of the Crown, or gave the representative of the Crown an opportunity to gain a point for prerogative. That is to say, the time when action was most needed was the time chosen for obstructing it.

'In Canada there was no popular legislature to embarrass the central power. The people, like an army, obeyed the word of command,—a military advantage beyond all price.

'Divided in government; divided in origin, feelings, and principles; jealous of each other, jealous of the

CHAP.  
III

Crown; the people at war with the executive, and, by the fermentation of internal politics, blinded to an outward danger that seemed remote and vague, —such were the conditions under which the British colonies drifted into a war that was to decide the fate of the continent.

‘This war was the strife of a united and concentrated few against a divided and discordant many. It was the strife, too, of the past against the future; of the old against the new; of moral and intellectual torpor against moral and intellectual life; of barren absolutism against a liberty, crude, incoherent, and chaotic, yet full of prolific vitality.’<sup>1</sup>

Success of  
English  
coloniza-  
tion due  
to superior  
capacity  
for adapta-  
tion  
secured by  
the  
principle  
of the  
common-  
wealth.

No candid ethnologist would hesitate to declare that a natural superiority has enabled the people of Europe rather than those of Africa to discover and possess America. It would be difficult, however, to point to qualities inherent in the English which distinguish them above their neighbours on the Continent. The materials from which the nations of Europe are drawn are too closely akin, and in Britain, at any rate, these materials are so mixed that it is impossible to establish any theory of racial superiority. English success in planting North America, and in the comparative failure of their rivals must, in fact, be traced to the respective merits not of breed but of institutions. In the course of the last few thousand years the peoples of Europe have distinguished themselves from those of Asia, Africa, America, and Oceania by their higher capacity for adaptation. Nowhere had this capacity such free play as in the islands protected by the British Channel, with the result that it developed there a society which differed specifically from that of the Continent. The English had advanced further than the other nations of Europe in replacing the personal authority of rulers

<sup>1</sup> Parkman, *Montcalm and Wolfe*, vol. i. pp. 36-8.

by laws based on the experience of those who obeyed them and subject to revision in the light of their future experience. From its nature such a system was bound to succeed better than a less flexible one when applied to conditions that were entirely new. In the Middle Ages the rule of law, by limiting the activity of personal rulers, made a larger call on the initiative of the subject, while it left him with greater freedom of action. In private enterprise the English adventurers of the sixteenth and seventeenth centuries surpassed those of Europe in much the same way as the Athenians had surpassed the Spartans two thousand years before. When the methods of the English and their Continental rivals are examined this difference will be found in many directions. Spanish colonization depended from the outset on the support as well as the direction of the Court. For a time the French monarchy used the agency of companies under the aegis of some minister like Richelieu; but so disappointing were the results that ere long the government swept the companies aside and took the task into its own hands. On the surface the Continental system might seem to have everything in its favour. It meant that a colonial enterprise had behind it the whole resources of the state, and it might naturally be supposed that an organized government with its power of general control would be able to apply these resources to the best purpose. 'Private purses are cowlde comforters to adventurers and have been founde fatall to all enterprises hitherto undertaken by the English by reason of delaies and jeloces and unwillingnes to backe that project, which succeeded not at the first attempt.'<sup>1</sup> These words, quoted from a pamphlet of the time, show how feeble the resources of English adventurers must have looked

<sup>1</sup> 'Reasons for raising a Fund for the Support of a Colony at Virginia,' quoted by Egerton, *A Short History of British Colonial Policy*, pp. 24-5.

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III

when first matched against enterprises backed by the treasuries of Spain and France. Thinkers of that age may well have felt that the planting of colonies, no less than the conduct of war, was essentially a task for organized governments. But various as were the problems of military science, they were not so various as those of colonization, and indeed no practical problem could be wider than one which related to the construction of human society. In war there were certain methods and principles, recognized as the result of long experience, which governments had to go upon. But at the close of the Middle Ages the problem of planting civilized societies in countries differing widely from those in which their own civilization had been developed was practically a new one. The compensating merits of the English system were to appear more gradually, as the novelty of the conditions which Europe was trying to handle began to assert itself. These conditions were extremely diverse and the principles to be followed in dealing with them less obvious than those which govern war. Ultimate success in an untried region of enterprise can only be secured as the fruit of experience. Many different attempts must be made and remade until the right principles and their appropriate methods are recognized in the few survivals from many failures. '*Planting of Countries*,' says Bacon, 'is like *Planting of Woods*; For you must make account, to leese almost Twenty yeeres Profit, and expect your Recompense, in the end.'<sup>1</sup> He might have added that, in other respects, it is like sinking for mines. The greater the number of trials that are made, the more likely are a few successes in the end to outweigh the loss involved in all the failures. The most likely places for settlement and the methods applicable to each will

<sup>1</sup> Bacon, *Essays*, xxxii.



gradually reveal themselves where the attempts are sufficiently numerous and varied. In this respect the English system gained by the freedom it left to private adventures, for schemes were launched by a number of people for a variety of motives at many different points and in many different ways. The state was not identified with the success or failure of any particular venture, and in case of disaster the loss was limited in extent. Settlements took root wherever the choice of the district and method was happy, and once established were capable of an indefinite growth in time to come.

It was natural and inevitable that all the mother states should set out to reproduce in the New World their own social, religious, and political systems, and this was true of England no less than of the others. But the institutions of Spain and France were riveted on the infant communities like plates of armour too strong for them to burst as they grew. Cramped into the harness of Spanish and French society which was quite out of keeping with their new conditions, they were crippled in the process. The system of nobility was transferred to the soil of America. Nothing could have been less suited to a new and growing society than the feudal system of land tenure evolved by Europe in the Dark Ages, yet it was forced on Canada in all its rigidity by Louis XIV. Its fundamental principles prevailed everywhere in France; but while the monarchy was still weak the various provinces had developed their own local customs, and in certain provinces these customs had been reduced to codes of which the clearest and most concise was the 'Custom of Paris.' The fact that most of the officials, priests, and merchants in Canada came from the capital is the most likely reason why this particular code was prescribed as the system of land tenure for Canada. Most of the

Policy of  
Louis  
XIV. in  
forcing  
French  
institu-  
tions on  
Canada.

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III

*habitants*, however, were used to the Custom of Normandy from which they came, a code adapted to suit the rural conditions of that province. The Custom of Paris, of which they knew nothing, was a code framed to suit the conditions of a thickly populated and highly developed district. 'Again and again the colonial courts and the administrative officials found themselves called upon to settle disputes which, but for the almost entire ignorance of the custom on the part of the disputants, would not have arisen.'<sup>1</sup> Canada was but the wicket of a continent, the threshold of a vast untravelled solitude, and lay within the call of its mysterious voice. Nature herself forbade the attempt to establish there the relations of a feudal tenant to his lord. 'Successive governors and intendants adverted to the great difficulty experienced in persuading the *habitants* to stay on their farms. The fascination of forest life appealed especially to the young men, who went off to the western wilderness by the score almost every year.'<sup>2</sup> The more glaring inconveniences were gradually modified, but the process of adjustment was incomparably slower than in the English colonies, where local assemblies were year by year at work transforming the laws in accordance with the experience they had gained.

Power of  
self-adap-  
tation  
secured to  
colonies  
by the  
English  
system.

'The physiognomy of a government,' as Tocqueville remarked, 'may be best judged in its colonies, for there its features are magnified and rendered more conspicuous. When I wish to study the merits and faults of the administration of Louis XIV., I must go to Canada; its deformity is there seen as through a microscope.'<sup>3</sup> Whether applied to the colonies of France or England this observation is equally just.

<sup>1</sup> Munro, *The Seigniorial System in Canada*, p. 10.

<sup>2</sup> *Ibid.* p. 46.

<sup>3</sup> Tocqueville, *The Old Régime and the Revolution*, p. 299, quoted by Munro, *The Seigniorial System in Canada*, p. xiv.

The centralized system natural to the French autocracy was repeated and emphasized in Canada. With no less fidelity the institutions of the commonwealth were reproduced, and in certain directions were developed by the customs which the colonists carried from England to their new homes. With them they brought their habit of obedience to law, spontaneous because the law was amenable to the collective will of those who obeyed it. Its burden they felt as that of a staff carried in the hand rather than as gyves riveted on their feet. Cut and shaped by the experience of their fathers to meet the needs that had been theirs, it was yet within the competence of themselves and their children to refashion it in accordance with their own experience to meet the changes of place and time. Law-making was work they understood, and what is more they knew the tools essential to the craft. From the outset each settlement developed an organ for gathering the experience of the little community and transforming it into law. Such a system was fatal to institutions which were the natural growth of European conditions and history, but unsuited to the climate of the New World. Projects for colonial aristocracies were mooted in England but never took root in the colonies themselves. Under the Canada Act of 1791 such a project was actually passed into law; but even in the one colony accustomed to distinctions of rank no attempt was made to enforce its provisions.<sup>1</sup> The autonomy of the English colonies, moreover, prevented the wastage of their local resources, for the assemblies had absolute control of their internal revenues. An authority centralized in France, however absolute, was powerless to check the speculations of local officials who silently devoured the public

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, p. 251. See also pp. 187 and 321.

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III

The  
general  
result ;  
in French  
territory,  
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accom-  
panied by  
stagna-  
tion ; in  
English  
territory,  
diversity  
accom-  
panied by  
vigorous  
growth.

funds. Doubtless the revenues of the English colonies would have shared the same fate had they lain at the disposal of the Government in London where, for reasons given in the previous chapter, corruption was a recognized institution.<sup>1</sup> But the jealous parsimony of the colonial assemblies, though carried to a point which often jeopardized the public safety, was an effective antidote to the poison which sapped the vitality of the French colony. It was not till the nineteenth century that corruption infected the public life of America. But the pest was of native growth, and England had then purged herself of it in the throes of her great struggle for existence with France.

Thus, while France was founding one great dependency under a single organization, which enabled the French colonists to move and act as one concentrated force against their enemies, the enterprise of the English adventurers, subjected to a minimum of state control, was scattering along the Atlantic a dozen communities, alike mainly in the liberty they enjoyed of differing from each other as well as from the country whose children they were. Then, as now, flags were portable, but how far the English or Continental system was to extend in America was to depend, not upon claims pegged by explorers, but on the ability of the competing societies to people them. In the earlier stages of the struggle what most determined the issue was the relative capacity of the different colonies to draw from Europe the best of its emigrants and the largest share of them, and here the number and the diversity of their settlements gave to the English their greatest advantage over Spain and France. To men with capital the tobacco plantations of Virginia or the Carolinas offered a highly remunerative investment. The yeoman or labourer could find his natural place

<sup>1</sup> See p. 106.

in any of the Northern colonies. In one or other of them an asylum was open to those whose need was liberty to worship after some fashion of their own. Spain and France closed their colonies to all who failed to conform to the religious and political pattern prescribed by the state. Those of England were open to the more independent inhabitants, not merely of the British Isles, but of all Europe. The volume of emigrants directed from France to Canada depended on the energy of its centralized government, but wherever a nucleus of civilization was established in the domain of the English Commonwealth, there population began to flow from a variety of sources of its own accord. Canada, however, by the prosperity it began to enjoy from the moment of its transfer, was to offer the best evidence that the English system rather than that of the Continent was suited for transplantation to new countries. Before the Seven Years' War was over, Haldimand, by descent a Huguenot, by birth a Swiss, who had taken service in the British army, reported to Amherst that there was nothing the Canadians dreaded so much as the return of French rule.<sup>1</sup> Never, indeed, from the close of that war till the present have the Canadians evinced the slightest desire to revert to the sovereignty of France. More significant still was their absolute refusal to join the forces sent from France to assist the English colonies in expelling Britain from America. The general result may be briefly stated in the words of Parkman: 'At the middle of the century the English colonies numbered in all, from Georgia to Maine, about 1,160,000 white inhabitants. By the census of 1754 Canada had but 55,000.'<sup>2</sup> Add those of Louisiana and Acadia, and the whole white popula-

1761.

<sup>1</sup> Egerton, *A Short History of British Colonial Policy*, p. 236.

<sup>2</sup> *Censuses of Canada*, iv. 61. Rameau (*La France aux Colonies*, ii. 81) estimates the Canadian population, in 1775, at 66,000, besides *voyageurs*, Indian traders, etc. Vaudreuil, in 1760, places it at 70,000.

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The conclusion of the whole matter.

tion under the French flag might be something more than 80,000. Here is an enormous disparity; and hence it has been argued that the success of the English colonies and the failure of the French was not due to difference of religious and political systems, but simply to numerical preponderance. But this preponderance itself grew out of a difference of systems.'<sup>1</sup>

It is a commonplace of history, yet abundantly true, that the English system prevailed by virtue of its freedom. That word is too often used of conditions that resemble freedom only as ferocity resembles courage, or lust love. Of all good things freedom is the most easily confounded with its correlative evil, and hence it is that so often men acting in the name of liberty, equality, and fraternity have achieved the negation of all three. The world gains by the freedom of men or societies only in so far as they themselves are liable to the consequences of what they were free to do or to leave undone, and are capable of reading, however slowly, the lesson of results. True freedom means that men, by reaping what they sow, shall learn with what seeds and how best to sow again and again. 'Good and evil we know in the field of this world grow up together almost inseparably; and the knowledge of good is so involved and interwoven with the knowledge of evil, and in so many cunning resemblances hardly to be discerned, that those confused seeds which were imposed on Psyche as an incessant labour to cull out, and sort asunder, were not more intermixed. It was from out the rind of one apple tasted, that the knowledge of good and evil as two twins cleaving together leapt forth into the world. And perhaps this is that doom which Adam fell into of knowing good and evil, that is to say of knowing good by evil.'<sup>2</sup>

<sup>1</sup> Parkman, *Montcalm and Wolfe*, vol. i. pp. 22-3.

<sup>2</sup> Milton, *Areopagitica*, p. 45.

Freedom is the principle by which nature is left, as far as possible, to attach the appropriate penalties to error and crime and, by an automatic system of punishment, to enable men to distinguish the true from the false and the right from the wrong. The value of liberty lies in its discipline, in its power to confront men with facts and to teach them what are the tasks, always the same yet ever changing, that they are called upon to face from time to time. It was this which freedom had done for Europe, and for England in an even higher degree. There, under the guidance of statesmen like Simon de Montfort and Edward I., a machinery of government had been devised whereby experience could be gathered from a country and a population larger than that of any previous commonwealth, from a nation instead of from a city, in such a manner that it could be formulated into law and so made the directing as well as the driving power of the state. For men educated to the system there was no great difficulty, as they spread to the continents oversea, in reproducing that machinery for similar areas. The colonists were thus able to control the immediate problems with which they themselves were faced, and, what is more, they became responsible for controlling them and so developed a sense of duty in respect of their own local affairs. Within certain limits they were left to make their own mistakes and to suffer by what they did, and so by hard experience to learn to distinguish good from evil. The domestic laws which they themselves made they were as ready to obey as the most law-abiding community in England itself. Hence, while the colonies of Spain and France languished, those of England grew and prospered. But at the moment when the final seal was given by Edward I. to the principle of representation a new problem came

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into being. By that principle he rendered the affairs of England amenable to the control of the English people and at the same moment rendered the affairs of the English colonists in Ireland amenable to their *own* control. But as experience had already proved, and was to prove again and again, the inhabitants of England and Ireland had interests which could not be dealt with apart. And this was true of Scotland also, as Edward I. had reason to know, for he had caused the Scots to send representatives to the British parliament. There were interests common to the people of the British Isles which, if the principle of the Commonwealth were to be applied to them, must be rendered amenable to their inhabitants as a whole. For these interests (and they included those of national life and death) no provision was made. By the opening of the seas and the consequent establishment of English colonies in America this defect in the structure of the Commonwealth was greatly increased. In the long struggle with Europe which ensued the existence of the Commonwealth in Britain, Ireland, and America was equally at stake. The task of self-preservation was the task of all. At the same time and owing to the same cause destiny was placing on the shoulders of this Commonwealth an overwhelming share of the duty imposed on Europe—that of controlling its relations with races more backward than its own. But how were the citizens of the Commonwealth in Scotland, Ireland, and the American colonies to be brought to recognize tasks as much more hard to discern as they were more vital than those involved in their local affairs? Some plan as pregnant with future results as that conceived by de Montfort and Edward I., some act not less creative than the institution of Parliament itself, was needed if the principles of the commonwealth were to



be realized to meet the far-reaching changes wrought by the work of Henry the Navigator. Were statesmen again to be found with the eye to see and the hand to shape? The destiny of the Commonwealth hung and yet hangs on the question. 'He that keepeth the law, happy is he.' But to make the law there must first be vision, and in the same place it is written that 'Where there is no vision, the people perish.'<sup>1</sup>

Such were the issues raised by the opening of the seas, but before closing that part of the narrative which deals with this epoch it is well to remark the absence from this chapter of a name which figured conspicuously in the previous two. Portugal, Spain, France and Holland all took part in the struggle with England, which lasted for three centuries, and was to decide how far the other continents were to be brought under the influence of their respective systems; but amongst the rivals in this titanic contest was not included that power which is now the greatest in Western Europe. Still raking in the ruins of the Empire they had overthrown the Germans had as yet no eyes for the crown of statehood, and the name at which Rome trembled and fell had ceased to be more than a geographical expression. Not till the close of the nineteenth century was their belated union to restore to the German people the position in Europe due to their vigour and their virtue. But the world beyond it had limits, and those limits had been reached. It was then too late for them to secure an adequate place in the regions opened by Henry the Navigator, without convulsing the framework of human society. Those who think to interpret the present without pausing to interrogate the past will do well to reflect on these facts, for the situation which the World is now facing hinges upon them.

Absence of Germany from the contests which arose from the opening of the seas.

<sup>1</sup> Proverbs xxix. 18.

## NOTE A

INTERDEPENDENCE OF ORDER AND LIBERTY. VIEWS OF  
LORD DUFFERIN AND LORD CROMER ON THE SUBJECTSee page  
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'In the meanwhile, in deference, to a great extent, to British public opinion, a certain development of free institutions was proposed. But Lord Dufferin appears to have had little confidence that he would succeed in "creating a vitalised and self-existent organism, instinct with evolutionary force." "A paper constitution," he said, "is proverbially an unsatisfactory device. Few institutions have succeeded that have not been the outcome of slow growth, and gradual development; but in the East, even the germs of constitutional freedom are non-existent. Despotism not only destroys the seeds of liberty, but renders the soil, on which it has trampled, incapable of growing the plant. A long-enslaved nation instinctively craves for the strong hand of a master, rather than for a lax constitutional régime. A mild ruler is more likely to provoke contempt and insubordination than to inspire gratitude."

'It was, without doubt, desirable to make some beginning in the way of founding liberal institutions, but no one with any knowledge of the East could for one moment suppose that the Legislative Council and Assembly, founded under Lord Dufferin's auspices, could at once become either important factors in the government of the country, or efficient instruments to help in administrative and fiscal reform.

'Where Order deigns to come,  
Her sister, Liberty, cannot be far.<sup>1</sup>

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'What Egypt most of all required was order and good government. Perhaps, *longo intervallo*, liberty would follow afterwards. No one but a dreamy theorist could imagine that the natural order of things could be reversed, and that liberty could first be accorded to the poor ignorant representatives of the Egyptian people, and that the latter would then be able to evolve order out of chaos. In the early days of the struggles which eventually led to Italian unity, Manzoni said that "his country must be morally healed before she could be politically regenerated."<sup>2</sup> The remark applied in a far greater degree to Egypt in 1882 than it did to Italy in 1827. Lord Dufferin was certainly under no delusion as to the realities of the situation. In the concluding portion of his report, he said that one of the main points to consider was "how far we can depend upon the

<sup>1</sup> Akenside, *Pleasures of the Imagination*.

<sup>2</sup> Bolton King, *History of Italian Unity*, vol. i. p. 112.

continued, steady, and frictionless operation of the machinery we shall have set up. A great part of what we are about to inaugurate will be of necessity tentative and experimental. . . . Before a guarantee of Egypt's independence can be said to exist, the administrative system of which it is the leading characteristic must have time to consolidate, in order to resist disintegrating influences from within and without, and to acquire the use and knowledge of its own capacities. . . . With such an accumulation of difficulties, native statesmanship, even though supplemented by the new-born institutions, will hardly be able to cope, unless assisted for a time by our sympathy and guidance. Under these circumstances, I would venture to submit that we can hardly consider the work of reorganisation complete, or the responsibilities imposed upon us by circumstances adequately discharged, until we have seen Egypt shake herself free from the initial embarrassments which I have enumerated above." In other words, Lord Dufferin, without absolutely stating that the British 'occupation must be indefinitely prolonged, clearly indicated the maintenance of the paramount influence of the British Government for an indefinite period as an essential condition to the execution of the policy of reform.'<sup>1</sup>

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## NOTE B

RESULTS OF UNREGULATED CONTACT OF EUROPEANS WITH  
A PRIMITIVE SOCIETY

The following extracts from the *Life of John Paton*, a missionary in the New Hebrides, afford some glimpses of the conditions which come into existence where no European state has made itself responsible for controlling the relations of primitive people with European traders:—

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'We found the Tannese to be painted Savages, enveloped in all the superstition and wickedness of Heathenism. All the men and children go in a state of nudity. The older women wear grass skirts, and the young women and girls, grass or leaf aprons like Eve in Eden. They are exceedingly ignorant, vicious, and bigoted, and almost void of natural affection. Instead of the inhabitants of Port Resolution being improved by coming in contact with white men, they are rendered much worse; for they have learned all their vices, but none of their virtues,—if such are possessed by the pioneer traders among such races! The Sandalwood Traders are as a class the most godless of men, whose cruelty and wickedness make us ashamed to own them as our countrymen. By them the poor, defenceless

<sup>1</sup> Cromer, *Modern Egypt*, pp. 266-7.

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161 and  
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Natives are oppressed and robbed on every hand ; and if they offer the slightest resistance, they are ruthlessly silenced by the musket or revolver. Few months here pass without some of them being so shot, and, instead of their murderers feeling ashamed, they boast of how they despatch them. Such treatment keeps the Natives always burning under a desire for revenge, so that it is a wonder any white man is allowed to come among them. Indeed, all Traders here are able to maintain their position only by revolvers and rifles ; but we hope a better state of affairs is at hand for Tanna. . . .

‘Thousands upon thousands of money were made in the sandalwood trade yearly, so long as it lasted ; but it was a trade steeped in human blood and indescribable vice, nor could God’s blessing rest on the Traders and their ill-gotten gains. . . . Sandalwood Traders murdered many of the Islanders when robbing them of their wood, and the Islanders murdered many of them and their servants in revenge. White men, engaged in the trade, also shot dead and murdered each other in vicious and drunken quarrels, and not a few put end to their own lives. I have scarcely known one of them who did not come to ruin and poverty ; the money that came even to the shipowners was a conspicuous curse. . . .

‘One morning, three or four vessels entered our Harbour and cast anchor in Port Resolution. The Captains called on me ; and one of them, with manifest delight, exclaimed, “We know how to bring down your proud Tannese now ! We’ll humble them before you !”

‘I answered, “Surely you don’t mean to attack and destroy these poor people ?”

‘He replied, not abashed but rejoicing, “We have sent the measles to humble them ! That kills them by the score ! Four young men have been landed at different ports, ill with measles, and these will soon thin their ranks.”

‘Shocked above measure, I protested solemnly and denounced their conduct and spirit ; but my remonstrances only called forth the shameless declaration, “Our watchword is,—Sweep these creatures away and let white men occupy the soil !”

‘Their malice was further illustrated thus : they induced Kapuka, a young Chief, to go off to one of their vessels, promising him a present. He was the friend and chief supporter of Mr. Mathieson and of his work. Having got him on board, they confined him in the hold amongst Natives lying ill with measles. They gave him no food for about four-and-twenty hours ; and then, without the promised present, they put him ashore far from his own home. Though weak and excited, he scrambled back to his Tribe in great exhaustion and terror. He informed the Missionary that they had put him down amongst sick people, red and hot with fever, and that he feared

their sickness was upon him. I am ashamed to say that these Sandalwood and other Traders were our own degraded countrymen; and that they deliberately gloried in thus destroying the poor Heathen. A more fiendish spirit could scarcely be imagined; but most of them were horrible drunkards, and their traffic of every kind amongst these Islands was, generally speaking, steeped in human blood.

'The measles, thus introduced, became amongst our Islanders the most deadly plague. It spread fearfully, and was accompanied by sore throat and diarrhœa. In some villages, man, woman, and child were stricken, and none could give food or water to the rest. The misery, suffering, and terror were unexampled, the living being afraid sometimes even to bury the dead. . . .

'The sale of Intoxicants, Opium, Fire-arms and Ammunition, by the Traders amongst the New Hebrideans, had become a terrible and intolerable evil. The lives of many Natives, and of not a few Europeans, were every year sacrificed in connection therewith, while the general demoralization produced on all around was painfully notorious. Alike in the Colonial and in the Home Newspapers, we exposed and condemned the fearful consequences of allowing such degrading and destructive agencies to be used as barter in dealing with these Islanders. It is infinitely sad to see the European and American Trader following fast in the wake of the Missionary with opium and rum! But, blessed be God, our Christian Natives have thus far, with very few exceptions, been able to keep away from the White Man's Fire-Water, that maddens and destroys. And not less cruel is it to scatter fire-arms and ammunition amongst Savages, who are at the same time to be primed with poisonous rum! This were surely Demons' work.

'To her honour, be it said, that Great Britain prohibited all her own Traders, under heavy penalties, from bartering those dangerous and destructive articles in trade with the Natives. She also appealed to the other trading Nations, in Europe and America, to combine and make the prohibition "International," with regard to all the still unannexed Islands in the Pacific Seas. At first America hesitated, owing to some notion that it was inconsistent with certain regulations for trading embraced in the Constitution of the United States. Then France, temporising, professed willingness to accept the prohibition when America agreed. Thus the British Trader, with the Man-of-War and the High Commissioner ready to enforce the laws against him, found himself placed at an overwhelming disadvantage, as against the neighbouring Traders of every other Nationality, free to barter as they pleased. More especially so, when the things prohibited were the very articles which the masses of the Heathen chiefly coveted in exchange for their produce; and where keen rivals in business were ever watchful to inform and to report against him. If illicit Trading prevailed, under such

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conditions, no one that knows average Human Nature can feel any surprise.

‘By-and-bye, the *Australian New Hebrides Company*, with two Steamers plying betwixt Sydney and the New Hebrides, took up the problem. Having planted Traders and Agents on the Islands, they found themselves handicapped in developing business, and began a brisk agitation in the Australasian and English Press, either to have the Prohibition applied all round, or completely rescinded. We have never accepted that alternative, but resolutely plead for an International Prohibitive law, as the only means under God to prevent the speedy sweeping off into Eternity of these most interesting Races by the tide of what is strangely styled Civilization.

‘At length Sir John Thurston, Her Majesty’s High Commissioner for the Western Pacific, whose sympathies all through have been on our side, advised that the controversy in the Newspapers cease, and that our Missions and Churches send a deputation to America to win the assent of the United States. Consequently, the next Federal Assembly of the Australasian Presbyterian Churches instructed two of its Professors in the Divinity Hall of Victoria, who were then visiting Britain, to return by America, and do everything in their power to secure the adhesion of the United States Government to the International proposal. Lest, however, these Deputies found themselves unable to carry out their instructions, the same Assembly appointed me as Deputy, with identical instructions, to undertake the task during the succeeding year. . . .

‘We reached Honolulu, the Hawaiian Capital, on the 25th, and spent nearly a whole day on shore. . . . The Queen had been deposed or deprived of power. National interests were sacrificed in self-seeking and partisanship. One could not but sigh for some strong and righteous Government. They are a people capable of great things. Everything seems to invite America to annex the group; and it would be for the permanent welfare of all concerned.’<sup>1</sup>

These words were written by John Paton in 1892, but the control of the New Hebrides is still shared by England and France, with the consequences which usually attend a divided responsibility. The complaints that the prohibition against the sale of fire-arms and intoxicants are only enforced by one nation continue. The condition of the islands is one of anarchy which would at once become a danger to the peace of the world if a re-grouping of European powers should again remove the present necessity which is laid on Britain and France to preserving at all costs a united front. The Hawaiian Group annexed by the

See pages  
161 and  
162.

<sup>1</sup> *John G. Paton, Missionary to the New Hebrides*, pp. 86, 87, 130, 150, 151, 448, 449, 450, 451.

United States shortly after Paton's visit now afford an instructive contrast to the conditions which still prevail under dual control in the New Hebrides.

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## NOTE C

### METHODS OF SPANISH COLONIZATION

Mr. E. G. Bourne defends the methods of Spanish colonization with much learning in the volume entitled *Spain in America*, of the series edited by Professor Hart under the title of *The American Nation. A History*. By a minute examination of the colonial laws enacted in Spain, Mr. Bourne proves the excellent intentions of the Spanish Court. His book contains, however but little evidence to show how far these good intentions were translated (or were indeed capable of translation) into the results they were intended to produce in the American colonies, thousands of miles from Madrid. He writes almost as though he were an admirer of the system under which the Spanish Court endeavoured to regulate the domestic affairs of the colonies through a strong council located in Spain.<sup>1</sup> When, moreover, he argues that the Spanish Empire was comparable rather to the Indian than to the colonial Empire of England, he fails to realize the ruin which would have overtaken India if the English Government had endeavoured to regulate in London details similar to those which in America the Spanish Government attempted to control from Madrid. To any one with experience of colonial administration the facts collected in this book are sufficient to explain the comparative failure of Spanish colonial methods as judged by their results at the present day. Mr. Bourne shows little perception of the truth conveyed by the remark made in New Zealand by Godley, who was afterwards to become the head of a department in Whitehall, 'I would rather be governed by Nero on the spot, than by a board of archangels in London.'

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191.

## NOTE D

PROFESSOR FREEMAN'S EXPRESSION OF THE FEELING THAT  
THE GOVERNMENT OF DEPENDENCIES IS NOT IN  
HARMONY WITH THE DEVELOPMENT OF THE PRINCIPLE  
OF THE COMMONWEALTH

"'Empire" forsooth; there is something strange, nay something ominous, in the way in which that word and its even more threatening adjective seem ready to spring to every lip at every moment. The word sounds grand and vague; grand, it may

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<sup>1</sup> See pp. 229-30.

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be, because of its vagueness. To those who strive that every word they utter shall have a meaning, it calls up mighty and thrilling memories of a state of things which has passed away for ever. Its associations are far from being wholly evil. It calls up indeed pictures of the whole civilized world bowing down to one master at one centre. But it calls up thoughts of princes who bound the nations together by the tie of a just and equal law; it calls up thoughts of princes who gathered the nations round them *to do the work of their day in that Eternal Question which needs no reopening because no diplomacy has ever closed it, the question between light and darkness, between West and East.* But the thought of Empire is in all shapes the thought, not of brotherhood but of subjection; the word implies a master who commands and subjects who obey; "Imperium et Libertas" are names either of which forbids the presence of the other. The thought of "Empire," alike in its noblest and its basest forms, may call up thoughts of nations severed in blood and speech, brought together, for good or evil, at the bidding of a common master; it cannot call up the higher thought of men of the same nation, scattered over distant lands, brought together, not at the bidding of a master, but at the call of brotherhood, as members of a household still one however scattered. In the gatherings of the Hellenic folk around the altars of the gods of Hellas the thought of Empire was unknown. . . .

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'That this now familiar name of "Empire" expresses a fact, and a mighty fact, none can doubt. *The only doubt that can be raised is whether the fact of Empire is a wholesome one, whether it is exactly the side of the position of our island in the world which we should specially pick out as the thing whereof to boast ourselves.* Empire is dominion; it implies subjects; the name may even suggest unwilling subjects. . . .

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205 and  
595.

'The fact of Empire then cannot be denied. The burthens of Empire, the responsibilities of Empire, cannot be denied. They are burthens and responsibilities which we have taken on ourselves, and which it is far easier to take on ourselves than to get rid of. *The only question is whether this our Imperial position is one on which we need at all pride ourselves,* one about which it is wise to be ever blowing our trumpet and calling on all the nations of the world to come and admire us. *Is there not a more excellent way, a way which, even if it is too late to follow it, we may at least mourn that we have not followed?* Is it wholly hopeless, with this strange, yet true, cry of "Empire" daily dinned into our ears, to rise to the thoughts of the old Greek and the old Phœnician, the thought of an union of scattered kinsfolk bound together by a nobler tie than that of being subjects of one Empire or "peoples" of one sovereign? Will not the memories of this day<sup>1</sup>

See page  
174.

<sup>1</sup> The birthday of Washington. The singular infelicity of this panegyric will be seen by reference to pp. 594 and 615.



lift us above this confused babble about a British Empire patched up out of men of every race and speech under the sun, to the higher thought of the brotherhood of the English folk, the one English folk in all its homes? Surely the burthen of barbaric Empire is at most something that we may school ourselves to endure; the tie of English brotherhood is something that we may rejoice to strive after. Cannot our old Hellenic memories teach us that that brotherhood need be none the less near, none the less endearing, between communities whose political connexion has been severed—alas, we may cry, that ever needed severing?<sup>1</sup>

See page  
615.

The generalization that “*Imperium et Libertas*” are names either of which forbids the presence of the other’ comes strangely from a historian who has done so much to explain the early growth of the English Commonwealth. As Freeman himself remarked in a passage quoted on page 92 of this enquiry ‘no one act in English history is more important than’ that of William the Conqueror in exacting the claim of the central government to direct obedience from every inhabitant of England. The reason why the liberty implicit in Teutonic custom perished in Germany, was due to the fact that the German Emperors failed to establish a genuine ‘*Imperium*.’ The student need go no further than Freeman’s own writings to learn that the growth of the English Commonwealth was only made possible because kings like the first William and Edward, unlike the German Emperors, had first made the sovereignty of the state a fact. The truth

Where Order deigns to come  
Her sister, Liberty, cannot be far

is written broadcast over his own pages. The condemnation of Empire on the ground that it implies ‘dominion’ and ‘subjects’ and ‘may even suggest unwilling subjects’ ignores the obvious fact that a commonwealth no less than any other kind of state assumes the right to the unlimited obedience of its citizens. Its laws, once promulgated, are presumed to be just as binding as the rescripts of an autocracy. In the matter of obedience the citizens of a commonwealth are no less subjects than those of an autocracy, despite the fact that in the formulation of the laws they may occupy a different position. The conception of *dominion*, of *imperium*, of *sovereignty* is no less vital to a commonwealth than to any other class of state. No commonwealth ever existed which did not contain unwilling subjects, nor will such a commonwealth ever exist till human nature is perfect. The existence of a criminal law in every commonwealth is incontrovertible proof that they all contain unwilling subjects. The

<sup>1</sup> Freeman, *Greater Greece and Greater Britain*, pp. 76, 77, 78, 79, 83, 84, The italics are not the author’s.

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necessity of compulsory education is a sufficient proof that the most enlightened commonwealths cannot depend upon all their citizens, even those which exercise the franchise, willingly and continuously to respond without compulsion to the duties laid upon them by the state in the interests of their own children. No one knew better than Freeman, when not carried away by his own eloquence or prejudice, that no state, however republican, can ever exist as a voluntary association.

Another curious feature in the passage above quoted is the frank recognition of the overmastering importance of the problem arising from contact between different levels of civilization, 'that Eternal Question which needs no reopening because no diplomacy has ever closed it.' He speaks with seeming admiration 'of princes who bind the nations together by the tie of a just and equal law.' Did he really mean that this supreme function was one which should be left to autocrats for fear that commonwealths should injure their own character by touching it? To turn from the abstract to the concrete, what did he think should be done with India? Did he honestly believe that its population were capable of governing themselves, and if not, would he really have been in favour of leaving them to anarchy or of transferring them from the British to the Russian Empire? The whole passage suggests that his views on imperial policy were the result of preconceived ideas which had never been tested by reference to the facts to which they were applied. His natural dislike of the word 'Empire' prevented him from grasping the fact that the dependencies are incorporated in the Commonwealth, and are not something which stands outside it. They and Britain are from every point of view one international state, and that a state organized on the principle of the commonwealth.

## NOTE E

DEFENCE OF GOVERNOR MOSTYN'S ACTION IN THE ISLAND OF MINORCA COMPARED WITH THE ATHENIAN DEFENCE OF THEIR CONDUCT TOWARDS THE ISLAND OF MELOS, AND WITH THE GERMAN DEFENCE OF THEIR INVASION OF BELGIUM

*Extract from Argument on behalf of Governor Mostyn A.D. 1773.*

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169.

'Of all the Minorquins in that island perhaps the plaintiff stands singularly and most eminently the most seditious, turbulent, and dissatisfied subject to the crown of Great Britain that is to be found in the island of Minorca. Gentlemen, he is, or chooses to be, called the patriot of Minorca. Now, patriotism is a very pretty thing among ourselves, and we owe much to it;

we owe our liberties to it; but we should have but little to value, and perhaps we should have but little of the liberty we now enjoy, were it not for our trade. And for the sake of our trade it is not fit we should encourage patriotism in Minorca; for it is there destructive of our trade, and there is an end to our trade in the Mediterranean if it goes there. But here it is very well; for the body of the people of this country they will have it: they have demanded it; and in consequence of their demands they have enjoyed liberty which they will continue to posterity,—and it is not in the power of this government to deprive them of it. But they will take care of all our conquests abroad. If that spirit prevailed in Minorca, the consequence of it would be the loss of that country, and of course our Mediterranean trade. We should be sorry to set all our slaves free in our plantations.’<sup>1</sup>

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*Argument of Athenian Envoys with Melian Commissioners B.C. 416.*

‘The Athenians also made an expedition against the isle of Melos with thirty ships of their own, six Chian, and two Lesbian vessels, sixteen hundred heavy infantry, three hundred archers, and twenty mounted archers from Athens, and about fifteen hundred heavy infantry from the allies and the islanders. The Melians are a colony of Lacedaemon that would not submit to the Athenians like the other islanders, and at first remained neutral and took no part in the struggle, but afterwards upon the Athenians using violence and plundering their territory, assumed an attitude of open hostility. Cleomedes, son of Lycomedes, and Tisias, son of Tisimachus, the generals, encamping in their territory with the above armament, before doing any harm to their land, sent envoys to negotiate. These the Melians did not bring before the people, but bade them state the object of their mission to the magistrates and the few; upon which the Athenian envoys spoke as follows:—

‘*Athenians.*—“Since the negotiations are not to go on before the people, in order that we may not be able to speak straight on without interruption, and deceive the ears of the multitude by seductive arguments which would pass without refutation (for we know that this is the meaning of our being brought before the few), what if you who sit there were to pursue a method more cautious still! Make no set speech yourselves, but take us up at whatever you do not like, and settle that before going any farther. And first tell us if this proposition of ours suits you.”

Procedure  
to be  
followed.

‘The Melian commissioners answered:—

‘*Melians.*—“To the fairness of quietly instructing each other as you proposè there is nothing to object; but your military

<sup>1</sup> Howell, *State Trials*, vol. xx. p. 105.

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preparations are too far advanced to agree with what you say, as we see you are come to be judges in your own cause, and that all we can reasonably expect from this negotiation, is war, if we prove to have right on our side and refuse to submit, and in the contrary case, slavery."

'*Athenians*.—"If you have met to reason about presentiments of the future, or for anything else than to consult for the safety of your state upon the facts that you see before you, we will give over; otherwise we will go on."

'*Melians*.—"It is natural and excusable for men in our position to turn more ways than one both in thought and utterance. However, the question in this conference is, as you say, the safety of our country; and the discussion, if you please, can proceed in the way which you propose."

Candour  
of the  
Athenians.

'*Athenians*.—"For ourselves, we shall not trouble you with specious pretences—either of how we have a right to our empire because we overthrew the Mede, or are now attacking you because of wrong that you have done us—and make a long speech which would not be believed; and in return we hope that you, instead of thinking to influence us by saying that you did not join the Lacedaemonians, although their colonists, or that you have done us no wrong, will aim at what is feasible, holding in view the real sentiments of us both; since you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must."

'*Melians*.—"As we think, at any rate, it is expedient—we speak as we are obliged, since you enjoin us to let right alone and talk only of interest—that you should not destroy what is our common protection, the privilege of being allowed in danger to invoke what is fair and right, and even to profit by arguments not strictly valid if they can be got to pass current. And you are as much interested in this as any, as your fall would be a signal for the heaviest vengeance and an example for the world to meditate upon."

'*Athenians*.—"The end of our empire, if end it should, does not frighten us: a rival empire like Lacedaemon, even if Lacedaemon was our real antagonist, is not so terrible to the vanquished as subjects who by themselves attack and overpower their rulers. This, however, is a risk that we are content to take. We will now proceed to show you that we are come here in the interest of our empire, and that we shall say what we are now going to say, for the preservation of your country; as we would fain exercise that empire over you without trouble, and see you preserved for the good of us both."

'*Melians*.—"And how, pray, could it turn out as good for us to serve as for you to rule?"

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'*Athenians*.—"Because you would have the advantage of submitting before suffering the worst, and we should gain by not destroying you."

'*Melians*.—"So that you would not consent to our being neutral, friends instead of enemies, but allies of neither side."

'*Athenians*.—"No; for your hostility cannot so much hurt us as your friendship will be an argument to our subjects of our weakness, and your enmity of our power."

Attitude  
of Athens  
to  
neutrals.

'*Melians*.—"Is that your subjects' idea of equity, to put those who have nothing to do with you in the same category with peoples that are most of them your own colonists, and some conquered rebels?"

'*Athenians*.—"As far as right goes they think one has as much of it as the other, and that if any maintain their independence it is because they are strong, and that if we do not molest them it is because we are afraid; so that besides extending our empire we should gain in security by your subjection; the fact that you are islanders and weaker than others rendering it all the more important that you should not succeed in baffling the masters of the sea."

'*Melians*.—"But do you consider that there is no security in the policy which we indicate? For here again if you debar us from talking about justice and invite us to obey your interest, we also must explain ours, and try to persuade you, if the two happen to coincide. How can you avoid making enemies of all existing neutrals who shall look at our case and conclude from it that one day or another you will attack them? And what is this but to make greater the enemies that you have already, and to force others to become so who would otherwise have never thought of it?"

'*Athenians*.—"Why, the fact is that continentals generally give us but little alarm; the liberty which they enjoy will long prevent their taking precautions against us; it is rather islanders like yourselves, outside our empire, and subjects smarting under the yoke, who would be the most likely to take a rash step and lead themselves and us into obvious danger."

Hope  
deceives  
the weak.

'*Melians*.—"Well then, if you risk so much to retain your empire, and your subjects to get rid of it, it were surely great baseness and cowardice in us who are still free not to try everything that can be tried, before submitting to your yoke."

'*Athenians*.—"Not if you are well advised, the contest not being an equal one, with honour as the prize and shame as the penalty, but a question of self-preservation and of not resisting those who are far stronger than you are."

'*Melians*.—"But we know that the fortune of war is sometimes more impartial than the disproportion of numbers might lead one to suppose; to submit is to give ourselves over to despair, while action still preserves for us a hope that we may stand erect."

CHAP.  
III

The gods  
favour the  
strong.

*'Athenians.*—"Hope, danger's comforter, may be indulged in by those who have abundant resources, if not without loss at all events without ruin; but its nature is to be extravagant, and those who go so far as to put their all upon the venture see it in its true colours only when they are ruined; but so long as the discovery would enable them to guard against it, it is never found wanting. Let not this be the case with you, who are weak and hang on a single turn of the scale; nor be like the vulgar, who, abandoning such security as human means may still afford, when visible hopes fail them in extremity, turn to invisible, to prophecies and oracles, and other such inventions that delude men with hopes to their destruction."

*'Melians.*—"You may be sure that we are as well aware as you of the difficulty of contending against your power and fortune, unless the terms be equal. But we trust that the gods may grant us fortune as good as yours, since we are just men fighting against unjust, and that what we want in power will be made up by the alliance of the Lacedaemonians, who are bound, if only for very shame, to come to the aid of their kindred. Our confidence, therefore, after all is not so utterly irrational."

*'Athenians.*—"When you speak of the favour of the gods, we may as fairly hope for that as yourselves; neither our pretensions nor our conduct being in any way contrary to what men believe of the gods, or practise among themselves. Of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can. And it is not as if we were the first to make this law, or to act upon it when made: we found it existing before us, and shall leave it to exist for ever after us; all we do is to make use of it, knowing that you and everybody else, having the same power as we have, would do the same as we do. Thus, as far as the gods are concerned, we have no fear and no reason to fear that we shall be at a disadvantage. But when we come to your notion about the Lacedaemonians, which leads you to believe that shame will make them help you, here we bless your simplicity but do not envy your folly. The Lacedaemonians, when their own interests or their country's laws are in question, are the worthiest men alive; of their conduct towards others much might be said, but no clearer idea of it could be given than by shortly saying that of all the men we know they are most conspicuous in considering what is agreeable honourable, and what is expedient just. Such a way of thinking does not promise much for the safety which you now unreasonably count upon."

The  
prospect  
of help  
from  
Lacedae-  
mon.

*'Melians.*—"But it is for this very reason that we now trust to their respect for expediency to prevent them from betraying the Melians, their colonists, and thereby losing the confidence of their friends in Hellas and helping their enemies."

*Athenians.*—"Then you do not adopt the view that expediency goes with security, while justice and honour cannot be followed without danger; and danger the Lacedaemonians generally court as little as possible."

*Melians.*—"But we believe that they would be more likely to face even danger for our sake, and with more confidence than for others, as our nearness to Peloponnese makes it easier for them to act, and our common blood insures our fidelity."

*Athenians.*—"Yes, but what an intending ally trusts to, is not the goodwill of those who ask his aid, but a decided superiority of power for action; and the Lacedaemonians look to this even more than others. At least, such is their distrust of their home resources that it is only with numerous allies that they attack a neighbour; now is it likely that while we are masters of the sea they will cross over to an island?"

*Melians.*—"But they would have others to send. The Cretan sea is a wide one, and it is more difficult for those who command it to intercept others, than for those who wish to elude them to do so safely. And should the Lacedaemonians miscarry in this, they would fall upon your land, and upon those left of your allies whom Brasidas did not reach; and instead of places which are not yours, you will have to fight for your own country and your own confederacy."

*Athenians.*—"Some diversion of the kind you speak of you may one day experience, only to learn, as others have done, that the Athenians never once yet withdrew from a siege for fear of any. But we are struck by the fact, that after saying you would consult for the safety of your country, in all this discussion you have mentioned nothing which men might trust in and think to be saved by. Your strongest arguments depend upon hope and the future, and your actual resources are too scanty, as compared with those arrayed against you, for you to come out victorious. You will therefore show great blindness of judgment, unless, after allowing us to retire, you can find some counsel more prudent than this. You will surely not be caught by that idea of disgrace, which in dangers that are disgraceful, and at the same time too plain to be mistaken, proves so fatal to mankind; since in too many cases the very men that have their eyes perfectly open to what they are rushing into, let the thing called disgrace, by the mere influence of a seductive name, lead them on to a point at which they become so enslaved by the phrase as in fact to fall wilfully into hopeless disaster, and incur disgrace more disgraceful as the companion of error, than when it comes as the result of misfortune. This, if you are well advised, you will guard against; and you will not think it dishonourable to submit to the greatest city in Hellas, when it makes you the moderate offer of becoming its tributary ally, without ceasing to enjoy the

Sub-  
mission to  
Athens in-  
volves no  
dishonour.

CHAP.  
IIIRefusal  
of Melians  
to submit.

country that belongs to you ; nor when you have the choice given you between war and security, will you be so blinded as to choose the worse. And it is certain that those who do not yield to their equals, who keep terms with their superiors, and are moderate towards their inferiors, on the whole succeed best. Think over the matter, therefore, after our withdrawal, and reflect once and again that it is for your country that you are consulting, that you have not more than one, and that upon this one deliberation depends its prosperity or ruin."

"The Athenians now withdrew from the conference ; and the Melians, left to themselves, came to a decision corresponding with what they had maintained in the discussion, and answered, "Our resolution, Athenians, is the same as it was at first. We will not in a moment deprive of freedom a city that has been inhabited these seven hundred years ; but we put our trust in the fortune by which the gods have preserved it until now, and in the help of men, that is, of the Lacedaemonians ; and so we will try and save ourselves. Meanwhile we invite you to allow us to be friends to you and foes to neither party, and to retire from our country after making such a treaty as shall seem fit to us both."

"Such was the answer of the Melians. The Athenians now departing from the conference said, "Well, you alone, as it seems to us, judging from these resolutions, regard what is future as more certain than what is before your eyes, and what is out of sight, in your eagerness, as already coming to pass ; and as you have staked most on, and trusted most in, the Lacedaemonians, your fortune, and your hopes, so will you be most completely deceived."

"The Athenian envoys now returned to the army ; and the Melians showing no signs of yielding, the generals at once betook themselves to hostilities, and drew a line of circumvallation round the Melians, dividing the work among the different states. Subsequently the Athenians returned with most of their army, leaving behind them a certain number of their own citizens and of the allies to keep guard by land and sea. The force thus left stayed on and besieged the place.

"... Meanwhile the Melians attacked by night and took the part of the Athenian lines over against the market, and killed some of the men, and brought in corn and all else that they could find useful to them, and so returned and kept quiet, while the Athenians took measures to keep better guard in future.

The  
Melians  
extermin-  
ated.

"Summer was now over. . . . The Melians again took another part of the Athenian lines which were but feebly garrisoned. Reinforcements afterwards arriving from Athens in consequence, under the command of Philocrates, son of Demeas, the siege was now pressed vigorously ; and some treachery taking place inside, the Melians surrendered at discretion to the Athenians, who put



to death all the grown men whom they took, and sold the women and children for slaves, and subsequently sent out five hundred colonists and inhabited the place themselves.'<sup>1</sup>

The argument in both these passages might be quoted as classic examples of what in modern phraseology is known as *realpolitik*.

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III

Since these last words were written in 1913 the same argument has been used by the Chancellor of the German Empire to justify the invasion of Belgium.

'Gentlemen, we are now in a state of necessity, and necessity knows no law! Our troops have occupied Luxemburg, and perhaps (as a matter of fact the speaker knew that Belgium had been invaded that morning) are already on Belgian soil. Gentlemen, that is contrary to the dictates of international law. It is true that the French Government has declared at Brussels that France is willing to respect the neutrality of Belgium as long as her opponent respects it. We knew, however, that France stood ready for the invasion. France could wait, but we could not wait. A French movement upon our flank upon the lower Rhine might have been disastrous. So we were compelled to override the just protest of the Luxemburg and Belgian Governments. The wrong—I speak openly—that we are committing we will endeavour to make good as soon as our military goal has been reached. Anybody who is threatened, as we are threatened, and is fighting for his highest possessions can have only one thought—how he is to hack his way through (*wie er sich durchhaut*)!'<sup>2</sup>

If the words here underlined are compared with those similarly marked on p. 232, and with the argument on behalf of Governor Mostyn on p. 230, the essential similarity of the reasoning will be seen.

<sup>1</sup> Thucydides, *Peloponnesian War*, translated by Richard Crawley, vol. ii. pp. 58-67.

<sup>2</sup> Speech of the German Chancellor, delivered in the Reichstag on 4th August 1914. Extracted from the *Times*, Tuesday, August 11, 1914, p. 5, col. 1.

## CHAPTER IV

### THE COMMERCIAL SYSTEM

#### CHAP. IV

Social and  
economic  
results  
produced  
in Europe  
by the  
opening of  
the seas  
leading to  
projects of  
coloniza-  
tion.

CONTACT with worlds both older and younger than herself led to deep and far-reaching changes in the internal condition of Europe. At the time of Henry the Navigator the soil was parcelled out in great estates held by nobles and by religious foundations, and, as their produce could not be marketed and turned into cash, it was mostly consumed on the spot in supporting large bodies of feudal retainers. His inventions, however, greatly improved the facilities for exchange. Articles of value were multiplied, the materials of coinage were increased, and the desire of the wealthy to possess them was stimulated. As in the present age the standard of living was rapidly raised. Landowners learned that it was possible to divert the bulky produce of their estates from the entertainment of their dependents to purchasing objects of luxury for themselves. Many sought, moreover, to increase their wealth by investing it in trade with the newly opened continents. In England the diversion of agricultural produce from feudal hospitality to manufactures and exchange was hastened by the dissolution of the monasteries. A great part of their wealth was applied to the creation of a new nobility, who spent it not on the poor but on themselves, or else invested it in foreign or colonial enterprises. 'It is generally recognized that, from

the latter half of Elizabeth's reign until the outbreak of the Civil War, England was in a flourishing condition. In fact this very prosperity implied economic distress among some classes. As civilization advances, it becomes more complex, and economic progress, while denoting an absolute increase in wealth, has hitherto implied a more uneven distribution thereof and greater extremes of riches and poverty. Such a period of progress, almost tantamount to an economic revolution, dates from the latter years of Elizabeth's reign. Wealth increased greatly, but at the same time pauperism became a permanent evil. . . . For virtually the first time Englishmen beheld as an every-day sight "the spectacle of Dives and Lazarus existing side by side."<sup>1</sup> Where society is divided into the very rich and very poor there naturally appears a host of adventurers who aspire to wealth which they know cannot be accumulated merely by the work of their own hands. The opening of the seventeenth century thus saw a decided increase of men eager to enrich themselves further by investing their property in foreign and colonial trade, and also of penniless adventurers ready to seek their fortunes across the seas, usually with the hope of returning home to enjoy their gains.

Rich and poor alike disposed to seek wealth in distant countries.

This world-wide revolution had also helped to disturb the balance of religious ideas. Western Europe was now divided into contending camps, and nowhere more than in England itself. Hence there was a third class disposed to seek in the new countries not wealth, but a home where, in spite of physical hardship, they might enjoy the liberty to worship as they chose. Unlike the adventurers such emigrants

Religious refugees also disposed to seek a home there. Projects of colonization the joint result.

<sup>1</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, pp. 44-5. From the subsequent pages of this inquiry will be seen how deeply it is indebted to the recent researches of this eminent American historian. The thanks of those interested in the inquiry are due to Mr. Beer and his publishers, for permission to print the copious extracts made from his works.

## CHAP.

## IV



Attitude  
of English  
Govern-  
ment  
towards  
these  
projects.

went to America meaning to stay there. They settled for the most part in the Northern colonies, and it was from them that the bulk of the American colonists were drawn.

Thus in the beginning of the seventeenth century there were two influences at work, the one economic, the other religious, disposing Englishmen to found communities in the New World. The object of the present chapter is to examine the attitude of those in charge of English public affairs towards the various enterprises projected by those who sought wealth or freedom in America. As shown in Chapter III. the colonizing movement was one in which rulers followed rather than led their subjects. Even for English rulers, however, it was necessary that they should ask themselves in what relation the new communities were to stand to the old. With the powers of Europe struggling for possession of the New World, Englishmen, whether mercantile adventurers or religious refugees, were unable to found colonies entirely beyond the protection and control of the English Commonwealth, even had they desired to do so. The sanction and authority of the English Government had to be obtained; and when application was made to the King and his ministers it was natural for them to consider how these ventures could be turned to the advantage of the State.

Tendency  
of medi-  
aeval  
corpora-  
tions  
formed to  
control  
territorial  
areas to  
develop,  
according  
to circum-  
stances,  
into (1)  
organs of  
local  
govern-  
ment; (2)  
separate  
states.

It is important to remember the form in which these projects were submitted to them. In the Middle Ages mechanics and merchants had developed the practice of forming guilds or corporations for the management of such aspects of their business as each individual could not control for himself. Guilds, like the Goldsmiths and Merchant Taylors, were formed to regulate the conduct of the several crafts, neither needing nor asking, to begin with at least, any authority from the State. Craftsmen of

all kinds and the merchants who deal in their wares naturally tend to congregate together for the purpose of exchange.

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IV

Such a congregation of human beings introduces certain dangers to health and social order to which agriculturists, from the more scattered nature of their occupation, are less exposed. Two thousand people collected in a town have common needs which do not arise in the life of a population distributed on farms. The principle of association already used in the regulation of individual trades was applied to meet these needs. Corporations were created to protect the town against internal disorder or external attack. Such corporations, therefore, soon found themselves called upon to fulfil certain functions appropriate to a government, and the powers derived from voluntary association were insufficient for the task. They tended, therefore, to develop in one of two directions, according to the nature of the country in which they were established. In parts of Germany and Italy, where no effective government was established, these corporations assumed the powers they needed and grew into city states. In a country like England, where the conditions of statehood had been realized, the corporation met the difficulty by obtaining from the central Government a delegation of its powers for local purposes. Powers of government were in fact delegated to the corporation in the form of charters. Thus in England corporations had developed, not into separate states, but into organs of local government.

The opening of the seas brought within the range of adventurers tasks which were usually too large for one individual. Such enterprises were of two kinds. Unlike the Portuguese the English at first had no ambition for possessing or ruling the Far East. They merely desired to trade with it, but

Corporations formed for enterprise in distant countries forced to apply to the State for privileges.

R

CHAP.  
IV

the trade was too risky for single adventurers or ships, for 'it was an accepted maxim that there was "no peace beyond the line."'<sup>1</sup> The result was the association of merchants desiring to engage in the Indian trade into a company whose business it was to organize fleets large enough to protect themselves. The possibility, if not the certainty, that such fleets would have to fight the navies of the Spanish king was foreseen, and it was essential that they should obtain beforehand some guarantees that their own Government would not disown them as pirates. The new business, unlike that of a guild of craftsmen or of a municipal corporation, was such as was sure to provoke foreign complications, and hence arose the necessity of obtaining the authority of Government in some shape or form. Quite naturally such adventurers assumed that those who contributed to the cost of the venture would alone enjoy the benefits to be reaped from it. Obviously it would have been inequitable if merchants who would not subscribe to the company had been allowed to send their ships under the protection of its convoys. Accordingly, what such companies asked for and got from the Crown was a monopoly of the trade which they engaged to open; nor could they, indeed, have raised the capital necessary for the purpose on any other terms. To understand the relations of England to Scotland and to the Irish and American colonies in the period under review, it is essential to remember that the whole Eastern trade was in the hands of a company, and also to realize how and why that company had acquired this vast monopoly.

Corporations  
formed for  
colonization  
necessarily  
demanded  
territorial  
rights, and  
thus were

In searching, moreover, for new routes to the populous and civilized East, Europe had stumbled across a continent largely vacant, and in the parts nearest to Europe inhabited by savages unfit for any

<sup>1</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, pp. 7-8.

employment but hunting and war. In order to realize the virgin wealth of America it was necessary to possess and to people it. The movement to acquire these territories seemed, and to some extent was, no more than a repetition of the movement which had once brought to England the Saxons and Normans, and had subsequently led Strongbow and his companions to Ireland. Just as Strongbow had been granted by Henry II. such Irish lands as he might conquer, so were territories in North America granted by the Crown to the adventurers who applied for them. 'These grants were distinctly feudal in nature, in that governmental rights were treated like private property, and were bestowed together with the soil upon the patentee.'<sup>1</sup> The earliest of these grants which led to effective colonization was made, not to an individual, but to a corporation, controlled by a court elected from the members and presided over by an official who was called, as is the chairman of the Bank of England at the present day, a Governor.<sup>2</sup> In the light of after events it is plain that these corporations could not, like the Merchant Taylors or Bank of England, retain their original character. They might have become, like the English municipal corporations, organs of the State, provided that their members could be made to share the responsibilities of the Commonwealth as a whole. Failing that, it was natural that their devotion to the Commonwealth should languish, and that their members should come to regard themselves as dedicated first and foremost to the corporation in the control of whose fast-increasing interests they shared. In the latter case it was inevitable that a corporation

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IV

destined  
to develop  
into organs  
of local  
govern-  
ment or  
into  
separate  
states.

<sup>1</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, p. 297.

<sup>2</sup> The accident of this title is largely responsible for the wholly misleading idea of a satrapy which clings to these governorships. In origin they were the head officials of a corporation, and in the case of at least one colony remained so till the last.

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IV

of men imbued with the principles of English society should develop into separate states.<sup>1</sup> Presently, when English colonization had secured a footing on American soil, grants were made to individuals like Lord Baltimore, in whom was vested the power to make and enact laws 'of and with the Advice, Assent, and Approbation of the Free-men of the same Province, or of the same part of them, or of their Delegates or Deputies.'<sup>2</sup> To the settlers in these proprietary colonies were given rights similar to those bestowed on men who held their lands under chartered companies, like those of Virginia or Massachusetts. The result was the same. Both contained the germ of an institution which must necessarily develop either into an organ of local government or else into the legislature of an independent commonwealth.

Element of  
monopoly  
in these  
territorial  
grants. ;

It is important to realize further that in the grants made to these corporations there was, from the territorial nature of the privileges sought from the English Government, an element of monopoly. The intrinsic value of the rights secured by the Virginia Company and its successors from the Crown lay in the exclusive title secured to them under their patent to the ownership of land within certain wide limits. This element of monopoly is further obscured by the fact that they developed into states so completely that, after generations have forgotten that originally they were no more than corporations.<sup>3</sup>

Colonizing  
corpora-  
tions  
demand  
protection  
against  
foreign  
states.

Something more, however, was granted by the Crown under its patent to these companies than a monopoly in land or trade. The very existence of the settlements they founded was menaced by France and Spain, and the shipping which brought their produce

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. ii. pp. 234-5.

<sup>2</sup> Macdonald, *Select Charters illustrative of American History, 1606-1775*, p. 56.

<sup>3</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, p. 324.



from America to England was exposed to attack by the fleets of both these powers, and also by those of the pirate states of North Africa. The Moslems had now been driven from Spain across the Straits of Gibraltar, but they still held their own in Morocco. There they had learned that the bridle with which Henry the Navigator had curbed Islam might be used as a scourge for the loins of Christendom. The Moors became a maritime people, and between 1609 and 1616 their corsairs captured 466 vessels, whose crews and passengers were taken as slaves to Algiers and Morocco.<sup>1</sup>

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That the Government should expect some benefit for the State from these ventures in return for the valuable rights demanded and the onerous duties assumed in granting them was only natural. Anxiety to make England independent of continental Europe in respect of shipping and of certain raw materials, more especially those of the shipbuilding industry, was the motive that prompted English statesmen to favour projects of American colonization. Her shipping was to England like the hair of Samson, the secret of her national strength. But the principal materials for shipbuilding were drawn from Northern Europe, and the possibility that she might be denied them was the nightmare of English Governments. From the Southern colonies they hoped that a substitute for the products of Southern Europe might in time be produced.<sup>2</sup> The customs levied on goods imported from foreign countries were, however, an important source of public revenue. Till Charles I. ascended the throne, tonnage and poundage had been

Interest  
of the  
English  
Govern-  
ment in  
fostering  
projects of  
coloniza-  
tion.

<sup>1</sup> Trevelyan, *England under the Stuarts*, p. 182. See also Beer, *The Old Colonial System*, Part I. vol. i. pp. 122-3. So late as 1784 the discovery of their own incapacity to deal with the Barbary pirates, when no longer protected by British fleets, was a factor in impelling the States after secession into forming an effective union. Marshall, *The Life of George Washington*, vol. ii. p. 81.

<sup>2</sup> See above, p. 196.

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Contractual relations developed between colonizing corporations and Government. Their binding nature under English law.

granted by Parliament to the King for his life, and neither he nor his ministers were likely to welcome a policy which would tend to diminish these sources of revenue. While, therefore, they favoured projects which, as they hoped, might enable England to furnish her necessities from countries controlled by herself instead of from those which were or might be controlled by her enemies, it was assumed by all parties from the outset that the change must be made without diminishing the public revenue levied on the goods.

That the colonies would export their products to England alone and that these products would be taxed on arrival there, was from the first taken as a matter of course, alike by Government, adventurers, and colonists.<sup>1</sup> In this there was no idea of treating the colonies as foreign states, for they were allowed to draw from England supplies which might not under English law be exported to any foreign state.<sup>2</sup> Thus from the outset the grant of the patent under which the colony was founded was the subject of bargaining between the Government and the person or persons applying for it; and the bargain when made was binding on the Government itself. A continental autocracy could have changed or cancelled the terms of a patent with a stroke of the pen. In England not the Government but the law was supreme, and the individual stood on an equal footing with the Government in subordination to the law. Thus the patent when granted was a contract with the State, 'and could be legally revoked only by the courts on suit brought by the Crown, showing that their provisions had been violated by the patentees.'<sup>3</sup> In 1677 the judges pronounced the New England

<sup>1</sup> See Note A at end of this chapter, p. 257.

<sup>2</sup> See Note B at end of this chapter, p. 257.

<sup>3</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, p. 304.

colony's charter of 1629 valid, and held that it made 'the Adventurers a corporation upon the place,'<sup>1</sup> a decision which defeated a scheme to abrogate the Massachusetts charter in order to establish direct government of the colony by the Crown.

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From the first, therefore, the relations of the Government with corporations which they regarded as purely commercial were dominated by the idea of compact. Wherever, as frequently happened, terms of the contract were found unsatisfactory by either party, it was a question of bargaining to alter them. In 1620, for instance, James I., finding that he was not receiving an adequate revenue on tobacco from the Virginia Company, persuaded them to acquiesce in the payment of an increased duty in virtue of a promise on the part of the King to prevent the growing of tobacco in England itself.<sup>2</sup> The bargain was faithfully carried out in 1636, and again in 1661, when regiments of soldiers were sent to destroy tobacco crops which had been raised in the counties of Gloucester, Worcester, and Hereford.<sup>3</sup> A year later the Company was found to have started a warehouse in a foreign country. Such a course was scarcely calculated to commend itself to the Government which in granting the Company their concession hoped that produce might be raised in America for England, and yield revenue to the King when landed there.<sup>4</sup> The wrangle which followed was ended by the Virginia and Bermuda Companies agreeing not to sell tobacco in foreign countries on condition that they should enjoy the sole right of importing tobacco into His Majesty's dominions. 'The agreement was distinctly in the nature of a

Relations  
of England  
with  
colonies  
one of  
bargain  
and con-  
tract from  
the outset.

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. ii. p. 271.

<sup>2</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, pp. 112-13.

<sup>3</sup> *Ibid.* pp. 166-8. See also Beer, *The Old Colonial System*, Part I. vol. i. p. 140.

<sup>4</sup> See Note C at end of this chapter, p. 257.

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To begin with, the King acted for the State. When Parliament ousted the King the principle of the contractual relation was rendered more definite in the Acts of Parliament which superseded the royal patents.

bargain.<sup>1</sup> The rapidly growing importance of commerce due to vastly increased facilities for marine transportation between peoples and continents led to relations between the new communities and the old which seemed from the first to be based on bargain and contract. An age had opened when the policy of statesmen began to be regulated by the maxims of the counter.

To begin with, adventurers applied to the Crown for their concessions, and it was with the King, in fact as well as in name, that their bargains were made. James I. and his successor denied that Parliament had any jurisdiction in the matter, and hoped, no doubt, to develop a revenue for themselves beyond the reach of parliamentary control. It was the Crown, therefore, which legislated for the colonies by order in council. Here again was exemplified the truth that no permanent compromise is possible between the principle of autocracy and that of the commonwealth. No people is assured of the control of any of their public affairs until they have assumed the control of all of them. Any powers of government which the Crown retained, the King was certain, sooner or later, to enlarge and use as a substitute for those he had lost. The struggle was one which could never end until Parliament had asserted its right to control all the powers of the Crown, including those of granting patents. With the execution of Charles I. and the suspension of the monarchy, the King's power to legislate for the colonies by order in council without reference to Parliament vanished, and was not reasserted by Charles II. Henceforward the commercial relations of England with the colonies were determined by Acts of Parliament. But Parliament represented the people of England alone, and was as much disposed as ever the King or his

<sup>1</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, p. 195.

ministers had been to view the matter from a standpoint which was primarily English. Instead of reversing the contractual principle which inspired the policy of the kings and their ministers, Parliament accepted that principle as the basis of its own statutes. The famous Navigation Act of 1660 'took less than a month to pass the House of Commons, there being virtually no opposition, since the bill embodied principles that were then universally accepted, and which already formed part of England's traditional policy.'<sup>1</sup> The colonial system, or '*le pacte colonial*' as the French have accurately called it, was embodied in more than one hundred statutes, of which the principal were the Navigation Act of 1660, the Staple Act of 1663, and the Plantation Duties Act of 1673. For the purpose of this inquiry it will suffice to indicate the broad principles which inspired this volume of fiscal legislation, noting at the outset that in the detailed application of these principles there were many exceptions which may be studied by those who are interested to pursue the subject in the masterly researches of Beer.

The original motive of the policy was to make English shipping and industries independent of foreign states. Hence the colonies were to be excluded from trade with foreign states, and were to trade with England alone. The outlying parts of the Empire were to pour their products into England like tributaries into a common stream. England was to be the estuary through which all trade with foreign nations was to go out and to come in. There was, moreover, an ever-increasing tendency to make England the emporium of trade between the different parts of the Empire. Scotland and the Irish and American colonies were forbidden to trade direct with the East. England was the sole channel

Principles  
under-  
lying the  
old colonial  
system.

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. i. p. 58.

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Effect on  
the  
colonial  
system of  
transfer-  
ring its  
control  
from King  
to Parlia-  
ment.

through which all traffic between the colonies and dependencies must pass.<sup>1</sup>

The hope of developing sources of revenue which were then less subject to the control of Parliament than internal taxes had been one of the motives which influenced James I. and his successor in creating the system. But when their system passed to the control of Parliament this particular motive ceased to operate. Parliament, on the other hand, was swayed by the influence of merchants whose chief concern was to protect their [business from competition.<sup>2</sup> The protective motive superseded the desire of raising revenue, and according to Beer's calculations the system can scarcely have yielded £6000 a year to the public revenue at the time of the Seven Years' War.<sup>3</sup> It was the alarming growth of public indebtedness and of the cost of defence which led Parliament, after the Peace of Paris, to treat the system as a serious source of revenue. Up till then the ruling motive of the English Parliament had been the protection of English industries, and their policy towards Scottish, Irish, and colonial industries, as well as towards foreign industries, was influenced by that motive. The English Parliament deliberately set itself to crush the nascent manufactures of Ireland and the colonies, justifying its action in doing so on the ground that English industries were called upon to meet all but a negligible fraction of the cost of Imperial defence. England was to undertake the defence of the Empire as a whole, and to defray the cost from its industries. The Irish and American colonies were to confine themselves to producing the raw material of those industries. Of the sister kingdom of Scotland no

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 125.

<sup>2</sup> *Ibid.* p. 234.

<sup>3</sup> *Ibid.* Chap. iii.

particular account was taken in the system. She must regard herself as compensated for finding no appropriate place in it by the gratuitous protection of the British fleets.

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Such was the underlying idea ; and the innumerable restrictions which grew up rose from the difficulty of giving effect to it in practice. Up to the time of the Commonwealth, for instance, a great part of the trade between England and the colonies was, through the lack of a sufficient number of English ships, carried in Dutch bottoms. The practical difficulty of securing that a Dutch vessel, when once it had quitted a colonial port, should discharge its cargo in England instead of diverting it to the Continent, was one of the motives of the first Navigation Act passed by the Rump Parliament in 1651.<sup>1</sup>

Administrative difficulty of enforcing system led to gradual increase of restrictions, (1). Exclusion of Dutch ships from carrying trade.

The outlying parts of the Empire were at first permitted to trade freely with each other. While the English Parliament had assumed the right to control by legislation the mutual relations of the various parts of the Empire, it possessed nowhere, except in England, an effective machinery of administrative control. In certain parts of the King's dominions such control was conspicuously lacking, especially in the sister kingdom of Scotland<sup>2</sup> and the colonies of New England. It was difficult, if not impossible, for the English Government to prevent merchants in Glasgow or Boston from trading with the Continent if they chose to do so. The inevitable consequence was that merchants in Ireland and the other colonies, who desired to trade with the Continent, were tempted to send their goods to those other parts of the Empire which had special facilities for illicit trade with foreign states. The result was a serious loss to the English

(2) Restrictions on inter-colonial trade.

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. i. p. 61.

<sup>2</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, pp. 71, 87-8.

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(3) Re-  
striction  
on  
Scottish  
and Irish  
trade.

The  
system  
devised in  
interests  
of colonial  
as well as  
of English  
trade.

customs, and an even more serious disadvantage to those merchants who conducted their trade in accordance with the law, and it was to remedy these evils that a series of restrictions were imposed on the trade between different parts of the Empire. The Acts of 1660 and 1663 had practically excluded Scotland from the legitimate plantation trade. In 1673 an Act was passed imposing duties on intercolonial trade, and a growing tendency set in to exclude Ireland from the trade as well. The administrative difficulty of enforcing the law in a decentralized Empire led in fact to a general tendency between the middle of the seventeenth and eighteenth centuries to tighten the system, and to insist on the idea that England was to be the general clearing-house of commerce, through which must pass, not only the foreign trade of the Empire, but the trade of one part of the Empire with another; though, as noted already, there were numerous exceptions in detail.

It is a mistake, however, as Beer has shown, to treat the policy as one devised entirely in the interests of the English people. 'A large number of colonial products received especial advantages in the British market by a system of preferential duties, by direct bounties, or by a combination of both, with the result that in a number of instances they acquired a monopoly thereof at the expense of foreign goods, with which under normal conditions they could not compete.'<sup>1</sup> In the case of tobacco the law went even further in absolutely prohibiting the English farmer from cultivating a singularly profitable crop, a prohibition which was effectively enforced. 'It would be difficult,' says Beer, 'to estimate whether colony or metropolis was called upon to bear a greater proportion of the sacrifice demanded by the prevailing ideal of a self-sufficient commercial Empire.'<sup>2</sup>

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 194.

<sup>2</sup> *Ibid.* p. 201.



It was believed, however, in the colonies that the commercial advantage of the system lay with England, and the English Government intended that it should be so. The colonies were supposed to be compensated by the immunity which they enjoyed from the burdens of Imperial defence. The conception which inspired the policy of the colonial pact is put in a nutshell by two seventeenth-century writers quoted by Beer. "The true Interest of England is its Trade; if this receives a Baffle, England is neither able to Support its Self, nor the Plantations that depend upon it, & then consequently they must crumble into So many distinct independ<sup>t</sup> Govern<sup>ts</sup> & thereby becoming weak will be a Prey to any Stronger Power w<sup>ch</sup> shall attacque them."

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The system aimed primarily at enriching England in order that England might be able to bear the whole charge of Imperial defence.

'From the very nature of the Empire's political organization it followed inevitably that the main burden of its defence had to be assumed by England. As was said in 1683, "small divided remote Governments being seldom able to defend themselves, the Burthen of the Protecting them all, must lye upon the chiefest Kingdom of *England*. . . . In case of war with forraign Nations, *England* commonly beareth the whole Burthen and charge, whereby many in England are utterly undone."'<sup>1</sup>

The Imperial Government, in fact, undertook to secure the whole of the King's dominions, including Scotland and the Irish and American colonies, against external aggression in an epoch when actual conquest by foreign states was a real and constantly recurring danger. The immense charge involved was before 1765 met by taxes limited to the inhabitants of the area which sent representatives to Westminster. These conditions account for one fact which it is

The Parliament at Westminster distinguished from Scottish, Irish, and colonial assemblies by its different relation to the executive.

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. i. p. 111, quoting John Carey, and also *England's Guide to Industry* (London, 1683), pp. 75-7. See also Note D at end of this chapter, p. 258.

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essential to hold in mind when examining the relations of England to Scotland, Ireland, and the colonies. In these countries the relations of the executive and legislature were totally different from those developed at Westminster. In Chapter II. the inquiry has traced the gradual process by which the principle of autocracy was eliminated in England, and the State was reconstituted on the principle of the commonwealth. Teutonic tradition required that the King should rule his people in accordance with their customs, and before changing their customs he was expected to obtain the consent of the people themselves. When the people grew too numerous to assemble in one place, the assent was given through representatives who became a clearly defined legislative organ. This was a great step in the development of the Commonwealth; and down to the close of the eighteenth century the separation of the legislature and the executive, 'a free and independent parliament,' was regarded by political thinkers as the final and sufficient condition of liberty. In a commonwealth, however, government is simply the administration of the law, and the facts to which laws apply are constantly changing. The raising and spending of revenue, essential conditions of all civilized governments, must in a commonwealth be made the subject of laws, and the facts with which they deal are so fluctuating as to require constant revision from year to year. The state cannot continue without government, nor government without the recurring activity of the legislature. Government must be able to secure the funds and obtain certain necessary changes in the law, or otherwise the state will perish. The executive and legislature could only exist as separate and independent organs on the assumption that they could always be trusted to agree before catastrophe overwhelmed the common-

wealth. The unvaried experience of the British Commonwealth has gone to disprove this assumption, and to show that however the legislative and executive functions may be distinguished for the purposes of theory, in practice they are inseparable aspects of one indivisible whole—Government.

In its victory over Charles I. Parliament had asserted, once for all, its position as the sole organ of legislation. For the next two centuries there ensued a half-unconscious struggle, in the course of which the King began by controlling Parliament, which in so far as it yielded to such control, ceased to be answerable to the people. Gradually, however, Parliament acquired control of the Crown and became increasingly answerable to the people themselves. The change was unconsciously effected by a legal fiction. Government was conducted by the leaders of Parliament more and more in deference to its views and less and less in deference to the views of the King. The legal fiction worked because successive monarchs gradually acquiesced in the practice of allowing their names to be used for policies with which they personally disagreed. The executive was in fact not separated from the legislature, but reunited to it, as it had been when, centuries before, the King himself ordained the laws. Had the two remained really separate, government would have come to a standstill and the State would have foundered.

Establishment of organic relations between legislature and executive at Westminster.

In Scotland and the colonies, on the other hand, none of the assemblies acquired the power of changing and therefore of controlling their own executives. Neither were their executives in reality appointed by the King, for the governors and other officials who constituted the executives, except in Rhode Island and Connecticut, held their appointments at the will of ministers who held their own offices at the will of the Parliament at Westminster. The reason why such

In Scotland, Ireland, and the colonies, the relations of legislature and executive were inorganic. Reason why they so long remained in this condition.

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an arrangement continued so long as it did is obvious. The real responsibility for national life or death remained with the Government at Westminster and never rested on these minor assemblies. The functions of local government assigned to them were not such as, if undischarged, brought them straightway face to face with destruction. They felt, and had by the commercial system been taught to feel, that the British Government stood behind them. In several of the American colonies government was paralysed by the disputes of the legislature with the executive when French armies were crossing their frontiers. Sooner or later, however, it began to appear that the system would only work in the long run if the local assemblies abdicated their functions and bowed to executives whose authority was ultimately derived from the Parliament at Westminster.

There was in fact one executive in the Commonwealth and many legislatures, representing many communities. The Parliament at Westminster controlled the executive, and asserted the right to control the relations of all these communities with one another and with foreign states. The control was avowedly exercised in the interests of English commerce on the plea that the cost of the system was to be treated as a charge on that commerce. The relations of England to the other parts of the Commonwealth were to be based on a balance of material interests. In the following chapters it will be necessary to see how far it was possible in a rapidly changing world to preserve the balance, and what happened to relations between the different parts of the Commonwealth when the interests upon which they rested began to change, shift, and alter their centre of gravity.

## NOTE A

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## ORIGIN OF THE OLD COLONIAL SYSTEM

'From the very earliest days of the British Empire, it was clearly understood that the dependencies were to be outside the barriers of the English fiscal system, and that merchandise exported to the colonies or imported from them should pay customs duties. The prospective increase in this revenue, as a result of colonization, was used by Hakluyt in 1584 as an argument in favor of a policy of expansion, and in all the colonial charters it was distinctly specified that duties were to be levied on this trade.'<sup>1</sup> 'If the colonial trade had been left completely uncontrolled, the colonies would still necessarily have been more or less affected by these duties, but the English fiscal regulations would not have been integrally connected with the colonial system proper.'<sup>2</sup>

See page  
246.

## NOTE B

FISCAL RELATIONS OF COLONIES TO ENGLAND UNDER  
THE OLD COLONIAL SYSTEM

'Parliamentary statutes and royal proclamations prohibited the exportation from England of a number of commodities. Some of these were essential to the development of new settlements, and accordingly, it was customary to insert in the letters patent a clause, permitting the exportation of such articles. The Virginia charter of 1606 permitted the shipment from England of all commodities necessary for the proposed colonies. Similarly the New England charter of 1620 allowed the patentees to export weapons, victuals, clothing, utensils, furniture, cattle, horses, and "all other things necessary for y<sup>e</sup> s<sup>d</sup> plantaçon, & for their use & defense & for trade w<sup>th</sup> the people there." Provisions to the same effect were inserted in the other charters.'

See page  
246.

## NOTE C

## VIRGINIA COMPANY'S ATTEMPT TO OPEN FOREIGN TRADE

'The Privy Council . . . on October 24, 1621, issued an order, which stated that the King had granted large immunities

See page  
247.

<sup>1</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, p. 101.

<sup>2</sup> Beer, *The Old Colonial System*, Part I. vol. i. p. 128.

<sup>3</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, pp. 105, 106.

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and privileges to the colony in the expectation that it would apply itself "unto such courses as might most firmly incorporate y<sup>e</sup> Plantation unto His Commonwealth & be most beneficiall to the same, w<sup>ch</sup> will best be done if the Commodities brought from thence were appropriated unto his Ma<sup>ty</sup> subjects & not communicated to fforeign Countries but by way of Trade & Commerce from hence only"; that the Virginia Company had settled a magazine in a foreign country, which course could not be permitted, "neither in policy nor for the hon<sup>r</sup> of ye state (that being but a Colony derived from thence) as also for that it may be a Loss unto his Ma<sup>ty</sup> in His Customs, if not the hazarding of y<sup>e</sup> Trade w<sup>ch</sup> in future times is well hoped may be of much profitt use & importance to this Commonwealth." Therefore the Privy Council ordered that tobacco and all other products of Virginia should be first landed in England and the customs thereon paid, before being shipped to foreign countries. Thus, on the first organized attempt to establish a direct trade from Virginia to a foreign country, the English government categorically asserted the principle, that the colony's export trade should be exclusively confined to the metropolis.<sup>1</sup>

## NOTE D

GROWTH OF IDEA THAT ENGLAND AND THE COLONIES COULD  
BE UNITED BY A COMMERCIAL BOND

See page  
253.

As early as 1623 'a leading member of the Virginia Company asserted that if the colony sought a foreign market for its produce, this would in time, "produce an independence vpon this Kingdome mutuall comerce beinge the strongest bond yt will vnite Virginia to this State."'<sup>2</sup> A memorial prepared by Robert Mason the proprietor of New Hampshire in 1665, illustrates the tendency of Englishmen in the seventeenth century on both sides of the Atlantic to rely upon a balance of interests to unite the colonies to England. Mason urges the Government to send commissioners to New England 'who should "endeavor to show the advantages which may arise to them by a better confidence and correspondence with England and by their cheerful submission to those ordinary duties, customs, and regulations, which are set upon trade in all other His Majesty's dominions, colonies, and plantations." These commissioners were further to point out how inconsistent exemption from these rules would be with the fact that the King of England "in all Treaties, and by his Fleets at Sea takes

<sup>1</sup> Beer, *The Origins of the British Colonial System, 1578-1660*, pp. 191, 192.

<sup>2</sup> *Ibid.* p. 177.

New-England into the Common Protection, and provides for its Safety as belonging to this Crowne, and may therefore expect some Measure out of the benefitt that arises to them in their Trade by their being English and happy subjects of this Crowne." . . . In the eyes of the statesmen and publicists of the day, England was fully justified in restricting colonial commerce in return for the burden assumed in defending and policing the Empire. If there existed any doubts on this point, they were more than quieted by the preferential treatment accorded to colonial products in the English market. While the enumerated articles could not be shipped to any place in Europe but England, in return competing commodities of foreign nations were virtually excluded from this market. The reciprocal nature of the old colonial system is manifest not only in the scheme of imperial defence, but to an even more marked degree in the preferential features of England's fiscal system.'<sup>1</sup>

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. i. pp. 108, 109, 127.

## CHAPTER V

### THE INCLUSION OF SCOTLAND IN THE BRITISH COMMONWEALTH

CHAP. V. IN the Middle Ages Scotland had been united to England by the conquests of Edward I., who actually summoned Scottish members to his Parliaments. This union, however, was destroyed at Bannockburn, and for the present it is sufficient to notice two results which followed the severance of the two kingdoms. Robert the Bruce, who had sat in the Parliaments of Edward I., copied his example on ascending the Scottish throne, by instituting a Parliament in his own kingdom, which maintained a somewhat shadowy existence till the eighteenth century. The second result of Bannockburn was a deep antagonism of the two kingdoms, leading to a close alliance of Scotland with France. To England, as Shakespeare's Henry V. says, the Scot was 'a giddy neighbour':

Conquest  
of Scot-  
land by  
Edward I.,  
1296 and  
1298.  
Its failure  
and the  
results,  
1314.

For you shall read that my great-grandfather  
Never went with his forces into France  
But that the Scot on his unfurnish'd kingdom  
Came pouring, like the tide into a breach,  
With ample and brim fulness of his force,  
Galling the gleaned land with hot assays,  
Girding with grievous siege castles and towns ;  
That England, being empty of defence,  
Hath shook and trembled at th' ill neighbourhood.<sup>1</sup>

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<sup>1</sup> Shakespeare, *King Henry V.* Act I. Scene ii.



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The marriage of Margaret, daughter of Henry VII., with James IV. was destined to unite the two Crowns, just when their common revolt from Rome was beginning to reconcile the two peoples. Scotland was alienated from France by the Reformation, which led to the establishment of the General Assembly of the Presbyterian Kirk, a body which gave the Scots what their phantom Parliament had never given them, a real organ of the popular will. In 1603 the great-grandson of Margaret and James IV., who in 1567 had been crowned James VI. of Scotland, peacefully succeeded to the English throne.<sup>1</sup>

Results of the Reformation and subsequent union of the two Crowns, 1603.

1567.

The accession of the Scottish dynasty to the English throne had curiously different results in the two kingdoms. In Scotland the King found himself, for the first time, backed by forces drawn from England, strong enough to repress the elements of disorder and to exact some semblance of a general obedience to the national Government. Four years after the union of the Crowns, King James said to his English Parliament, 'I write and it is done, and by a Clarke of the Councell I governe Scotland now, which others could not do by the sword.'<sup>2</sup>

Effect of the union of the Crowns on Scotland.

In England, on the other hand, the accession of a dynasty accustomed to the subservience of Scottish Parliaments hastened the crisis which transferred the sovereignty from the King to the people. To James his Scottish Estates were 'the model of what Parliamentary institutions ought to be: "If any man doe propound or utter any seditious or uncomely speeches, he is straight interrupted and silenced. Only such bills as I allowe of are put into the Chancellor's hand to be propounded to the Parliament. When they have passed them for lawes, they are presented unto

Effect of the union of the Crowns on England.

<sup>1</sup> For a more detailed account of Scotland and the Scottish Parliament before the Union of the Crowns see Note A at end of this chapter, p. 296.

<sup>2</sup> Rait, *Scotland*, p. 166. See also Keith, *Commercial Relations of England and Scotland, 1603-1707*, pp. 20-1.

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English and Scottish Parliaments united in a solemn league and covenant to oppose the ecclesiastical policy of Charles I., 1643.

me, and . . . I must say: 'I ratifie and approve all things done in this present Parliament.' And if there bee anything that I dislike, they rase it out before."'<sup>1</sup>

Finding himself the recognized head of the Episcopal Church of England, he proceeded to enforce conformity with its tenets on his subjects in both kingdoms. This policy, continued by his uncompromising son, forced the General Assembly of the Presbyterian Church and the Parliament of England, itself largely Presbyterian, to combine against him. In negotiating such an alliance, however, it was natural that the English Parliament should prefer to deal with a civil body which like itself could claim to represent the nation as a whole, than with the Assembly of the Scottish Presbyterian Church. Henceforward the Scottish Parliament began to overshadow the ecclesiastical body which had done so much more than itself for the national unity of Scotland. Quickened by the example and vitality of the English Parliament, it now began to speak as the real mouthpiece of the Scottish nation, and to be recognized as the one authority competent to do so. The result was a solemn league and covenant between the two Parliaments which 'bound the three nations of England, Scotland, and Ireland to swear "each one of us for himself, with our hands lifted up to the Most High God," to "endeavour to bring the Churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of Church government, directory for worship and catechizing"; to "endeavour the extirpation" of Popery, Prelacy, and schism; to "preserve and defend the King's Majesty's person and authority in the preservation and defence of the true religion, and liberties of the kingdoms"; and to bring to trial and

<sup>1</sup> Rait, *Scotland*, p. 167.

“condign punishment” all enemies of the Solemn League and Covenant. It was ratified by the Parliament and by the Assembly of Divines at Westminster and “ordained to be solemnly taken in all places throughout the Kingdom of England and the Dominion of Wales.” The General Assembly saw to its subscription in Scotland.’<sup>1</sup>

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As has happened so often before and since, an attempt was made to control Britain through Ireland, and to support his tottering cause Charles now fell back on forces recruited from the Catholic Irish. But the attempt was viewed by Protestant England and Scotland in much the same light as the burghers of the Orange Free State and the Transvaal thirty years ago would have regarded an attempt by England to subdue them by forces recruited from the Zulu and Basuto tribes. In Aberdeen, where the Irish were left by Montrose “killing, robbing, and plundering . . . at their pleasure. . . . The wife durst not cry nor weep at her husband’s slaughter before her eyes, nor the mother for her son, nor daughter for father; if they were heard, they were presently slain also.” For three days the “savage Irish” worked their will, even while Montrose, at the market cross of this Royalist town, was making proclamation of letters patent which promised pardon to penitent subjects of the King.’<sup>2</sup> Montrose, however, was defeated by Leslie at Philiphaugh, where ‘A butchery “more horrible than any that had followed upon any of Montrose’s victories” stained Leslie’s laurels on his great day. An eye for an eye and a tooth for a tooth would have been a code of mercy at Philiphaugh. The defenders of Christ’s Crown and Covenant slaughtered in cold blood 300 Irish women and children, and fifty soldiers whose lives they had

Attempt by Charles I. in 1645 to master England and Scotland with Irish forces, leading to his execution in 1649.

<sup>1</sup> Rait, *Scotland*, p. 216.

<sup>2</sup> *Ibid.* pp. 220-1.

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promised to spare. Provocation had not been wanting, for Montrose's Irish had slain men "with no more feeling of compassion and with the same careless neglect that they kill a hen or capon for their supper," and the Ulster massacres had created a feeling against Irish Roman Catholics similar to that which in more recent days the massacre of Cawnpore aroused against the Sepoys.<sup>1</sup> The King surrendered to the Scottish army near Newark, and was handed over to the English Parliament on condition that no harm should befall his person. The Irish card having failed, Charles began to intrigue with the Scots, seeking with their aid to regain his liberty and the mastery of England. The growing importance of their Parliament had now attracted to its benches the flower of the Scottish nobility, who were thoroughly alarmed by the growth of the Republican movement in England. Charles treacherously promised to establish by force the Presbyterian Church in England; and the Scottish Parliament by a large majority resolved to invade England, and sent Hamilton with 10,000 men across the border, but only to be destroyed by Cromwell near Preston. The execution of the King was the immediate result.

Horried at this act, the Scottish Parliament hastened to proclaim Charles II., not merely as King of Scotland, but also as King of England and Ireland. Cromwell, returning from Ireland, where he had gone to reassert the authority of the English Commonwealth, invaded Scotland and defeated Leslie at Dunbar. Charles II., however, was crowned at Scone, and marched on England with an army furnished by the Scottish Parliament. At Worcester his forces were defeated and destroyed by Cromwell on the anniversary of Dunbar. Charles fled the country, and in

Execution of Charles I. denounced by the Scottish Parliament which declares war on England.

Leslie defeated at Dunbar, Sept. 3, 1650.

Charles II. defeated at Worcester Sept. 3, 1651.

<sup>1</sup> Rait, *Scotland*, p. 224, quoting Gardiner, *Great Civil War*, vol. ii. p. 356.

Scotland as well as in England the monarchy for the time being ceased to exist. The bond established between the two countries by the union of the Crowns was gone.

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Recent events, however, had proved that the lives of the two nations were inseparably connected, and some new bond had to be found for two communities which were now Commonwealths not merely in substance but also in name. 'The English Parliament at first spoke of asserting the right of conquest over "so much of Scotland as is now under the power of the Forces of this Commonwealth."' <sup>1</sup> 'It is not for the honour of the English nation to have foreigners to come and have a power in the legislature. They are but provinces at best. In justice you ought not to admit any other to have an equal power with your own nation.' These words, uttered by Thomas Gowen, the member for Launceston in 1659, show that in the Rump there were not wanting men who would have treated the Scots as they had treated the Irish, and as Athens had once treated her Ionian allies. When, however, the whole country lay at England's feet, wiser counsels prevailed, and it was determined to incorporate England and Scotland as one Commonwealth. Hence it was felt that some form of assent should be obtained from the Scottish people themselves, and representatives from the shires and burghs were assembled at Dalkeith for the purpose. Scotland was accorded thirty members in the British Parliament. The second Protectorate Parliament, which included three Scottish peers in the House of Lords, formally ratified the Union.

Parliamentary union of England and Scotland effected by Cromwell.

Cromwell died soon after, and the Rump, which reassembled in the following May, declined to recognize the legality of the measure, but was itself

Death of Cromwell 1658.

<sup>1</sup> Rait, *Scotland*, pp. 237-8, quoting C. S. Terry, *The Cromwellian Union* (Scottish Historical Society).

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Dissolu-  
tion of  
the Union  
by Monk,  
1660, and  
restoration  
of Charles  
II.

dissolved by Monk before it had perfected a new Bill to ratify the Union. Monk proceeded to summon a separate Parliament for Scotland, which now hailed the restoration of Charles II. as a deliverance from subjection to the English Commonwealth. The Union was far from popular in England itself, where for the moment it had seriously increased the cost of government to the tax-payers.<sup>1</sup>

Obsequious-  
ness of  
Scottish  
Parliament  
summoned  
in 1661 by  
Charles II.

Charles II. began by appointing an obsequious Privy Council, and a new Parliament, in which the elective members as well as the temporal and spiritual peers were allowed to choose their own Lords of the Articles,<sup>2</sup> was summoned and met at Edinburgh. By judicious packing Charles II. was able to maintain in Scotland Parliaments as obsequious as his Privy Councils. But the necessity of packing his Parliaments points to the fact that the King could no longer hector them as his grandfather had done. The English system, under which changes in the law required the consent of Parliament, had come to stay. In Scotland as in England the legislative power, at any rate, had once for all passed from King to Parliament, and the effect on their mutual relations began to appear.

James  
threatened  
in 1679  
with  
exclusion  
by the  
English  
Parliament  
from the  
English  
throne  
induces  
the  
Scottish  
Parliament  
in 1680 to  
ratify his  
title  
to the  
Scottish  
throne.

James, Duke of York, who was the heir to the throne, was a bigoted Catholic, and the prospect of his succession was increasingly distasteful to the English people. To exclude him, a Bill was introduced into Parliament, the supporters and opponents of which, first known as 'Petitioners' and 'Abhorrrers,' were afterwards called Whigs and Tories. The Bill passed the Commons, but was rejected in the Lords. James, however, fearing that his right to the English Crown was in jeopardy, determined to secure his ancestral title to the Northern kingdom. For seven

<sup>1</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 59.

<sup>2</sup> See Note A at end of this chapter, p. 299.

years no Scottish Parliament had sat, but James, as his brother's Royal Commissioner (a position answering to that of Viceroy in Ireland), proceeded to convene a Parliament, which in obedience to his wishes passed an Act declaring that any one who attempted to alter the succession was guilty of perjury and rebellion.

When James II. succeeded to the throne the Scottish Parliament, not pliable enough to repeal the penal laws against Catholics at his bidding, was dissolved. No other was called, and the King governed through the Privy Council, which he filled with members of that religion. His attempt to pursue a similar policy in England so alienated all Protestant sections of opinion that the leaders of both parties invited William of Orange, Stadholder of the Dutch Republic, who had married James's daughter, Mary, to come over and assume the government. William landed at Torbay, and James fled to France.

In England the Revolution was consummated by the Bill of Rights, an Act of Parliament which began by declaring that James had abdicated the throne, and that William and Mary were now joint sovereigns of England, Ireland, and the Dominions thereunto belonging. After their death the Crown was to go to the descendants of Mary, or, failing such descendants, to those of James's second daughter, Anne, who was married to Prince George of Denmark. Papists, or persons marrying Papists, were for ever excluded from the succession. 'It hath been found by experience,' so ran one of the articles, 'that it is inconsistent with the safety and welfare of this Protestant Kingdom, to be governed by a Popish Prince or by any King or Queen marrying a Papist.'<sup>1</sup> In a document which aimed a deadly blow at the doctrine of divine right, this frank appeal to experience deserves to be noted. Occasion was also taken in this statute to codify

CHAP.  
V

1681.

James II. comes to the throne, but the Scottish Parliament is dissolved on refusing to support his Catholic policy, which in England leads to the Revolution. William and Mary placed on the throne in 1689.

The Bill of Rights. Its ultimate effect in transferring the control of external affairs from the King to ministers responsible to the English Parliament.

<sup>1</sup> Bill of Rights, sec. ix.

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## V

certain principles now recognized as essential to the constitution, such as the exclusive control of Parliament over legislation and supply. In one respect, however, the Bill of Rights went further, for up to the Revolution 'an express law declared the whole power of the militia, and immemorial custom admitted the general control of the army, to lie solely with the King.'<sup>1</sup> The Bill of Rights now abrogated custom and law by enacting 'that the raising or keeping a standing army within the Kingdome in time of peace, unless it be with consent of Parlyament, is against the law.'<sup>2</sup> As a standing army was essential to the safety of the kingdom, this meant that its existence in future depended on the sanction of Parliament, a sanction since maintained by passing the Army Annual Act for one year only. The control of defence is inseparable from the control of foreign policy. It is not a separate function, but merely one aspect of the primary function of government, that of controlling the issues of national life and death. Parliament, by securing the control of the forces, had secured the power of paralysing the foreign policy of the King. And this in fact was what it did. The King, taught by his supreme responsibility for the safety of the State, saw that the maintenance of English liberties depended upon checking the steadily increasing power of France. Parliament and the nation, not feeling that responsibility, were blind to the danger, and denied William the troops necessary to support his policy. William now hit upon the device of choosing his ministers only from the leaders of the largest party in the House of Commons. He himself was in some measure able to dominate his ministers; but his less forceful successors rapidly drifted into the position

<sup>1</sup> Temperley, *Cambridge Modern History*, vol. v. p. 252.

<sup>2</sup> Bill of Rights, sec. i.



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of accepting the policy of whatever leaders could for the time being undertake to control Parliament. The final control of external as well as of other executive business thus passed (though in the case of foreign affairs rather more gradually than in the case of domestic affairs) from the King to leaders whom Parliament could change just as the electorate could change Parliament itself. Henceforward candidates began to appeal to their constituents on the ground that if elected they would support a particular leader identified with a particular policy. Ministers, members, and electors began to realize that the responsibilities of national life or death now rested on themselves, and therefore began to develop some understanding of the issues for which they were responsible. Thus in England during the period under review, the Crown, having lost already the power of making the law, was now fast losing the power of administering it. Parliament through its leaders was acquiring an undisputed control over foreign as well as over domestic policy.

More rapidly, because more consciously, the Scottish Parliament was advancing the same claim for itself. When James II. fled, it brushed aside the pretence put forward in the English Bill of Rights that James had abdicated the throne, and frankly asserted its right to uncrown a king who had violated the laws which Parliament had made. In other respects the measure which it passed coincided with the Bill of Rights. For the moment, indeed, the two kingdoms were animated by the common and overmastering desire to rid themselves for ever of sovereigns who acknowledged the supremacy of Rome. The next act of the Scottish Parliament, however, was to secure William's assent to the abolition of the practice of delegating business to a committee which was practically beyond its control, and once for all the Lords of the Articles were abolished. 'At

The Scottish Parliament now more important than the English Parliament in asserting its claim to control the executive.

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one bound the Estates adopted the constitutional principles for which English Parliaments had fought since the fourteenth century. The Scottish constitutionalism of the reign of William of Orange was the gift of England; it had but small roots in the past of a country where freedom had not broadened from precedent to precedent. The Scottish Parliament had played an insignificant part in the making of the nation, but the mere existence of parliamentary institutions is always potentially a menace to any Government not founded on the will of the people. If the Estates had not fought for power it was equally true that they had never been beaten, and they could reasonably argue that what they had not dared to oppose had depended upon their sanction and concurrence. If constitutionalism was young, it was also vigorous, and the Scottish Convention went beyond the English in its assumption of complete and uncontrolled power.’<sup>1</sup>

The impossibility of dividing between two parliaments the control of the policy required to ensure the peace and safety of Great Britain.

In both kingdoms the principle was now established that the succession to the throne was based on laws which, like all others, could be changed only by the will of the people themselves. And, as in the American colonies, the claim to control the executive was urged more importunately in the younger assembly than in the older one. But history had conclusively proved that the two peoples were now inseparably connected by common interests. Of these the first and greatest was the maintenance of the *pax Britannica* in its strictest sense,—the interest of both in avoiding a war with each other. Plainly such a struggle must expose Britain to the growing power of France, which would be used to force upon it a dynasty to whose religious and political principles the majority in both commonwealths were averse. Centuries of experience had proved that under

<sup>1</sup> Rait, *Scotland*, pp. 276-7.

separate Governments war between Scotland and England could not long be avoided. As against Europe, moreover, and in the interests of the system for which the entire island now stood, there was room for only one policy. But if there were two Governments independent of each other, by whom was that policy to be controlled? To entrust it to their common King was to remove it from the control of either Parliament. To leave it to the larger of the two Parliaments was to tempt the stronger to neglect the interests of the weaker. Unschooled by responsibility, the vassal state would in any case believe that its interests were neglected. Vassalhood, moreover, would deprive it of the experience and contact with vital facts which alone enabled the people of a commonwealth to face the sacrifices required of citizens in the interests of the State.

For more than a century, from the Reformation to the Revolution, Scotland had been preoccupied with religious affairs. Under the influence of James I. and VI. attempts at colonization had been made which were not without subsequent importance. Nova Scotia, where one such attempt had been made in 1621, was practically abandoned to the French by Charles I. in 1632. Of greater importance was the settlement of Scots affected by James in Ulster, Donegal, Tyrone, and Fermanagh, which was destined to leave an indelible mark alike on Irish and American history. But the nation at this period was too intent upon religious issues, and too much weakened by the struggles they produced, to attend as closely as its Southern neighbour to far-reaching projects of industry or commerce. In England, throughout this period, the subtle influence of the continents opened by Henry the Navigator was rapidly affecting the economic condition of the people, and modifying the whole course of national policy. The vigorous policy

Ruin of  
Scottish  
trade, and  
general  
impoverish-  
ment  
consequent  
on the  
union of  
the Crowns.

CHAP.  
V

1650.

of Cromwell strengthened the hands of the great East India Company, and a further impetus was given to its trade when Charles II. renewed its charter. In twenty-three years the annual value of imports from Bengal alone increased from £8000 to £300,000, and shares worth £70 in 1664 had risen to £300 in 1681.<sup>1</sup> Except during the brief period when Cromwell united the two countries, the Scots were excluded by the navigation laws from the lucrative trade with America, and by the monopoly of the East India Company from sharing the wealth which flowed from Asia.<sup>2</sup> James I. had failed to secure the assent of the English Parliament to a treaty establishing free trade with Scotland in all articles except wool, cattle, hides, and linen yarn, though by an unconstitutional exercise of the Royal prerogative the boon was granted<sup>3</sup> till it was cancelled by Parliament in 1650. Free trade between the two countries, however, was re-established by Cromwell's Union, but withdrawn once more when the Scots at the Restoration reasserted their right to a separate Parliament, which, failing to secure a *zollverein*, retaliated by passing navigation laws of its own.<sup>4</sup> Further negotiation in 1668 and 1685 was abortive. The reduction of her ancient commerce with France and the Netherlands after the union of the Crowns, and the disorders of the seventeenth century had combined with the absorption of her national energy in religious affairs to reduce Scotland to the depths of poverty. 'A report on the Scottish Burghs, drawn up in 1692, shows that in Glasgow "near five hundred houses were standing waste," that the Harbour of Ayr was ruinous, and that the High Street of

<sup>1</sup> Mathieson, *Scotland and the Union, 1695-1747*, p. 26.

<sup>2</sup> See Note B at end of this chapter, p. 300.

<sup>3</sup> Mathieson, *Scotland and the Union, 1695-1747*, p. 21. See also Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 17.

<sup>4</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 90.

Dumfries contained scarcely a habitable house.’<sup>1</sup> ‘The poverty, the abject misery of the country, was such that every bad season produced a literal famine. In 1698 and the three preceding years the harvests were very bad, and Fletcher of Saltoun—one of the greatest intellects and one of the most ardent patriots of Scotland—wrote a discourse on the state of the nation which throws a vivid light on the material wretchedness and the moral anarchy that prevailed. “Many thousands of our people,” he said, “are at this day dying for want of bread. . . . Though perhaps upon the great want of bread, occasioned by the continued bad seasons of this and the three preceding years, the evil be greater and more pressing than at any time in our days, yet there have always been in Scotland such numbers of poor, as by no regulations could ever be orderly provided for; and this country has always swarmed with such numbers of idle vagabonds as no laws could ever restrain.” “There are at this day,” he adds, “in Scotland (besides a great many poor families very meanly provided for by the church-boxes, with others, who by living upon bad food fall into various diseases) two hundred thousand people begging from door to door.”’<sup>2</sup>

It was at this juncture that the Revolution took place, and that the Crown of Scotland was offered by its Parliament to William and accepted by him on condition that the Presbyterian Church should be established in Scotland. The struggle with Episcopacy as well as with Papacy was thus closed by the Revolution, and, suddenly released from religious controversies, the nation found itself free to think of mundane affairs. ‘By an unforeseen and unexpected change of the genius of this nation, all

Effect of the Revolution in diverting the attention of Scotland from religion to commerce. The Darien scheme.

<sup>1</sup> Rait, *Scotland*, p. 282.

<sup>2</sup> Lecky, *History of England in the Eighteenth Century*, vol. ii. pp. 178-9, quoting Fletcher, *Political Works*, pp. 122-3, 144.

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## V



their thoughts and inclinations . . . seem to be turned upon trade.'<sup>1</sup> In matters of business as well as in matters of State, the history of Scotland had been one of arrested development. Hoping to equal at one stroke the commercial as well as the constitutional achievements of the English, the Scots hastened to stake their slender resources on a single venture, which, as they believed, would enable them to share in the wealth now pouring into England across the seas. The scheme itself cannot be understood without some notice of the personalities and interests of which it was the joint product. Of these personalities the most important was William Paterson, son of a Lowland farmer, who, having tried his fortune as a pedlar in England, migrated to the West Indies. There he made the acquaintance of certain pirates who knew the track first opened by Balboa across the Isthmus of Darien and 'recounted with transport the ease with which they had passed and repassed from the one sea to the other, sometimes in hundreds together, and driving strings of mules before them loaded with the plunder of friends and foes.'<sup>2</sup> Returning to England, he proved his aptitude for practical affairs by founding the Bank of England, and while doing so must have realized how vast were the profits which the English East India Company derived from their trade with the East. His next project was one which, had it been realized, would have destroyed the monopoly of the English Company. This was to connect Europe with Asia by planting an international colony whose business it would be to open and maintain a route across the Isthmus of Darien. Avoiding the long and dangerous voyages by the Horn or the Cape of

1694.

<sup>1</sup> Fletcher, *Political Works*, p. 82, 'First Discourse concerning the Affairs of Scotland.'

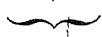
<sup>2</sup> Scott, *Tales of a Grandfather*, vol. iv. p. 28, quoting Dalrymple, *History*, vol. ii. p. 90.

Good Hope, the wealth of the East was to be shipped across the Pacific, transported across the Isthmus by the colony and reshipped across the Atlantic to Europe. 'The isthmus of Darien or Panama was, in his estimation, the "door of the seas and the key of the universe"; a Scottish colony planted on this neck of land would draw to itself the commerce of both the Atlantic and the Pacific; wafted by the trade winds, and transferred in a single day's journey from sea to sea, the commodities of Europe, America, and the West Indies would be exchanged here for those of the East Indies, China, and Japan; and "the universal force and influence of this attractive magnet" would "enable its proprietors to give laws to both oceans, and to become arbitrators of the commercial world, without being liable to the fatigues, expenses, and dangers, or contracting the guilt and blood of Alexander and Cæsar."' <sup>1</sup> In principle he had anticipated the vast enterprise which the United States is just carrying to its completion in the Panama Canal. To render it more attractive, however, huge projects of settlement in South America were grafted on to it, and Paterson, who seems to have dreamed of floating his scheme on an international basis, proposed it to 'the merchants of Hamburgh, to the Dutch, and even to the Elector of Brandenburg; but it was coldly received by all these states. The scheme was at length offered to the merchants of London, the only traders probably in the world who, their great wealth being seconded by the protection of the British navy, had the means of realizing the splendid visions of Paterson. But when the projector was in London, endeavouring to solicit attention to his plan, he became intimate with the celebrated Fletcher of Saltoun. This gentleman, one of the most accomplished men, and best patriots,

<sup>1</sup> Mathieson, *Scotland and the Union, 1695-1747*, pp. 36-7.

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whom Scotland has produced in any age, had, nevertheless, some notions of her interests which were more fanciful than real, and, in his anxiety to render his country service, did not sufficiently consider the adequacy of the means by which her welfare was to be obtained. He was dazzled by the vision of opulence and grandeur which Paterson unfolded, and thought of nothing less than securing, for the benefit of Scotland alone, a scheme which promised to the State which should adopt it the keys, as it were, of the New World. The projector was easily persuaded to give his own country the benefit of his scheme of colonization, and went to Scotland along with Fletcher. Here the plan found general acceptance, and particularly with the Scottish administration.’<sup>1</sup>

‘Act for a  
Company  
tradeing to  
Affrica  
and the  
Indies,’  
passed  
by the  
Scottish  
Parlia-  
ment,  
1698.

The measure now contemplated by the Scottish administration was designed to open to Scotland the trade of the West as well as of the East and of the countries which lay upon the road thither. Under its terms a Scottish company was to be empowered ‘to trade with Asia, Africa, and America; to plant colonies in places not already possessed by any European power; to defend their trade and colonies “by force of Arms”; to make reprisals for any damage done them; to conclude treaties with foreign powers; and to have all rights of government and admiralty in their colonies. All their ships and goods were to be free from customs and duties for twenty-one years. The Scots Navigation Act of 1661 was suspended in their favour, and they were granted a monopoly of trade to Africa, America, and the Indies, “excepting and without any prejudice to any of the Subjects of this Kingdom to trade and navigat . . . to any part of America where the Collonies plantations or possessions of the said Company shall not be settled,” that is, of course, reserving the Scots trade to the English

<sup>1</sup> Scott, *Tales of a Grandfather*, vol. iv. pp. 28-9.



Plantations. Lastly, His Majesty promised to interpose his authority to have restitution made for any harm done to the company. This Act was clearly the work of an independent Scots Parliament. In pre-Revolution days, when Court influence was supreme, through the Lords of the Articles, such an Act could not have been passed. The official who now represented the Court, Tweeddale, Lord High Commissioner, obviously went beyond his instructions. Burnet says that the King "drew an instruction empowering the commissioner to pass a bill promising letters patent for encouraging of trade, yet limited, so that it should not interfere with the trade of England: when they went down to Scotland, the king's commissioner either did not consider this, or had no regard to it; for he gave the royal assent to an act, that gave the undertakers either of the East India or West India trade, all possible privileges."<sup>1</sup> The Scottish Parliament had, indeed, claimed the right to confer privileges such as would enable any one who chose to trade from Scotland to evade the system by which for a century England had sought to regulate her own trade with the East and West.<sup>2</sup>

Paterson, though persuaded by Fletcher to nationalize his project, realized, as Fletcher did not, that Scotland was unable to finance it.<sup>3</sup> He turned, therefore, to English financiers for support, and for reasons which must now be explained he had cause to think that he would not look for it in vain. As noted in Chapter III.<sup>4</sup> the English East India Company had created and maintained at their own charge the conditions necessary for trade with India.

Hostility  
of London  
merchants  
to English  
East India  
Company.  
Their  
proposal  
to finance  
the  
Scottish  
company.

<sup>1</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, pp. 167, 168, quoting Burnet, *History of his own Times*, vol. iv. p. 277.

<sup>2</sup> See Note B at end of this chapter, p. 301.

<sup>3</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 169.

<sup>4</sup> See above, pp. 148-50. Also Hunter, *History of British India*, vol. ii. pp. 322-3.

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In the closing decades of the seventeenth century interlopers in ever-increasing numbers were tempted by the growing value of the trade to ignore the monopoly. When the Company tried to repress them they attacked it on the ground that such privileges as the Company claimed could not be conferred by the King but by Parliament only, thus opening an important phase in the struggle of Parliament to control the prerogative. Some of the interlopers formed a new company which competed with the old one for parliamentary powers. The struggle which raged in and out of Parliament in the last decade of the seventeenth century was closed in 1702 by the voluntary union of the two companies. Meantime, however, there were others in London who aspired to share in the Eastern trade, and thought that the English Company's monopoly might be attacked more successfully from Scotland than England. Paterson got into touch with them, and they undertook to find £300,000. A further £200,000 was to be raised in Hamburg and Amsterdam. The remainder was to be found in Scotland itself. 'Almost every one who had, or could command, any sum of ready money embarked it in the Indian and African Company ; many subscribed their all ; maidens threw in their portions, and widows whatever sums they could raise upon their dower, to be repaid an hundredfold by the golden shower which was to descend upon the subscribers. Some sold estates to vest the money in the Company's funds, and so eager was the spirit of speculation, that, when eight hundred thousand pounds formed the whole circulating capital of Scotland, half of that sum was vested in the Darien stock.'<sup>1</sup>

Successful  
opposition  
on the part  
of English  
East India  
Company.

It was hardly to be expected that the directors of the English East India Company should watch with-

<sup>1</sup> Scott, *Tales of a Grandfather*, vol. iv. p. 31.

out concern the products of the East pouring into Scotland duty free, to be smuggled thence into England duty free again, for every one knew that a large proportion of the dutiable articles which reached England evaded the vigilance of the customs authorities. Scotland, moreover, too poor to protect her own sea-borne commerce, depended upon the protection of the English fleets. The English East India Company now realizing that their position was at stake, moved their Parliament to address the King. William replied that 'the King had been ill served in Scotland, but hoped some remedies might still be found to prevent the evils apprehended,' and dismissed Tweeddale from office. Parliament, moreover, by threatening the English subscribers with impeachment, compelled them to withdraw their support, and diplomatic pressure was successfully applied to the same purpose in Hamburg and Holland.

A demand for separate ambassadors accountable to Scotland alone was the immediate result. 'His majesty's ministers abroad,' said Fletcher in the Scottish Parliament, 'paid by the Crown of England, are no longer to be looked upon as ministers for the Crown of Scotland. Since we are separate kingdoms, and have separate ministers at home, we ought to have separate ministers abroad; especially in an affair wherein we may have a separate interest from England, which must always be in matters of trade. . . . Neither ought we to have separate ministers only upon the account of trade, but upon all occasions, wherein the honour or interest of the nation is concerned. That we have not had them formerly, since we were under one king with England, was, I suppose, to save charges, and because we trusted to the impartiality of such as we judged to be the ministers of the King of Great Britain.'<sup>1</sup>

Fletcher's  
demand  
for  
separate  
ambassadors.

<sup>1</sup> Fletcher, *Political Works*, p. 86, 'First Discourse on the Affairs of Scotland.'

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Failure  
of an irre-  
sponsible  
Govern-  
ment to  
proportion  
means to  
ends.

Fletcher's speech shows how easily a people, situated as the Scots then were, drift without knowing it into supposing that they can enjoy membership in two states and continue indefinitely to reap the benefits of both. The Scottish ministers were to treat the interests of the Scottish State not merely as separate from those of England, but as opposed to them. And yet, when that treatment brought Scotland into collision with foreign powers, the English ministers were to treat Scotland as an integral and inseparable portion of the State of Great Britain. It is not children only, but men put in the position of children, that fall into thinking that they can eat their cake and also keep it. Never having been called upon to handle foreign affairs, Fletcher and the Scottish Parliament, like Grattan and the Irish Parliament a century later, were adrift of the realities which underlay them. But an ordinary sense of humour might have saved Fletcher from the suggestion that 'It will be also fit, that the company petition the parliament to address his majesty, that the three small frigats, lately built at the expence of this nation, may be appointed for a convoy to the next ships they shall send out.'<sup>1</sup> Fletcher's view was, however, adopted by the Scottish Parliament. In the Act to authorize the incorporation of companies for foreign trade they provided that if traders 'happened to be attacked and violently seized and otherwise disturbed by persons not in open war with Their Majesties, that then and in that case Their Majesties would be pleased to order that the recovery of the ships and goods so seized or otherwise molested and hindered be carried on and prosecuted by publick means and at publick expense.' But the only means with which the Scottish Parliament had furnished the

<sup>1</sup> Fletcher, *Political Works*, ‡ pp. 88-9, 'First Discourse on the Affairs of Scotland.'

King for the purpose were the three frigates, 'which,' as Hodges said to them, 'for pinching their charges you have laid up to rot.' If the King were indeed to protect the Darien argosies it could only be with fleets maintained by the very English commerce which, as Englishmen believed, the Darien scheme was intended to divert. The truth was that Scotland, without realizing the fact, had lived under the protection of English fleets and had learned to depend on it. But three years before, the Scottish ministers had applied to those of England for protection against the corsair states of Barbary, and the English admiral in the Mediterranean had been instructed to protect their ships. The English Government had granted to Scottish merchants the convoys for which they applied, and it was not unnatural that both English Houses should protest against a measure which 'did seem to engage the shipping and strength at sea of this nation to the great detriment even of this kingdom.'

CHAP.

V

1695.

The Darien scheme was not merely one which needed adequate protection from aggressors, but was in itself an act of aggression. If there was any place in the New World which Spain might claim as her own by right of discovery, that place was the Isthmus of Darien.<sup>1</sup> The route across it was first tracked in 1513 by Balboa, who had claimed for Spain not only the land but the seas beyond it.<sup>2</sup> It was athwart this very route that the Scottish Parliament now proceeded to plant a colony of their own, at a moment when the impending struggle with France made it of vital importance for England to remain on friendly terms with Spain. On the 26th July 1698, the first expedition sailed from Leith Roads, disembarked at the Bay of Acla, and founded a town

Plantation  
of the  
Scottish  
colony on  
Spanish  
territory.  
The  
settlers  
expelled  
by Spain.

1513.

1698.

<sup>1</sup> See Note C at end of this chapter, p. 302.

<sup>2</sup> See above, p. 133.

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which was called New Edinburgh. Tropical disease, however, want of capital, and the consequent failure of supplies quickly began to work their ruin. Jamaica, the Barbadoes, and the American colonies had been warned by the English executive to give them no relief, and the settlement was abandoned. The vacant site, however, was occupied by a second and third contingent until they were forcibly ejected by the Spaniards. Some of the Scottish adventurers languished in Spanish prisons in danger of execution as pirates until they were released on the intervention of the English ambassador.

Resent-  
ment of  
Scottish  
Parlia-  
ment.

1700.

Scotland was reduced to the verge of bankruptcy,<sup>1</sup> and the feelings provoked by the failure of the enterprise were voiced on the meeting of the Scottish Parliament. 'It must still be fresh in every man's memory, that insults were made upon the sovereignty and independence of this nation, in the matter of their late trading company, both before their settlement in Darien by the legal actings of the Scots Parliament, and by the scandalous memorials given in by the English resident at Hamburgh, most falsely representing the Scots company as private persons, having no authority; as also, by the said resident's using threatening denunciations and expressions against the Hamburghers, if they should enter into any trading society with them; and likewise, after that company was settled in Darien, by their most barbarous and inhuman execution of some proclamations issued out against them. That whether these most injurious stretches were calculated really for the sake of an interest altogether foreign to this island, it was not proper here to dispute; but that it was certain, that this had raised an insuperable jealousy

<sup>1</sup> Under the terms of the union of 1707 the shareholders got back their capital and 5 per cent up to date (Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 197).

in the Scots nation, which could not fail sometime or other, to break forth into consequences dangerous to both nations. And, therefore, he concurred with those noble and worthy members in promoting the overture, from which he should expect, that some laws should be enacted towards regulating the administration and government at home, as might deliver a Scots prince and ministry from foreign influence, and might thereby compose those hurtful jealousies, in all times coming, to the mutual peace and quiet of the whole island.’<sup>1</sup>

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V

The Scottish Parliament now determined to assert its own independence of England in the conduct of foreign affairs. Scarcely had William died and Anne come to the throne when war broke out with France. Next year the Scottish Parliament passed a Bill<sup>2</sup> repudiating the prohibition against the importation of French wines into the country, and refused even to accept an amendment providing that ‘No Scots ship should trade direct with France now in time of war.’

Scottish  
Parliament  
endeavours  
to secure  
to itself  
control of  
foreign  
affairs.

At the instance of Fletcher, Parliament then turned to the discussion of a series of measures designed to transfer the entire control of the executive from the Crown to itself. Queen Anne’s policy was now largely determined by the advice of her English ministers. So long, therefore, as the Scottish ministers held office at the Queen’s pleasure, their action must be controlled rather by the wishes of the English Ministry than by those of the Scottish Parliament. In a Bill which he introduced, Fletcher proposed to remedy this defect by ‘limiting’ the prerogative. The following extracts show, however, that he proposed not merely to ‘limit’ but actually to abolish the whole prerogative of the Crown. ‘These are the ends to which all the

Fletcher’s  
proposals.  
1703.

<sup>1</sup> Speech of Member of Scottish Parliament, May 26, 1703.

<sup>2</sup> It is fair to note that Fletcher opposed this measure.

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V

limitations are directed, that English councils may not hinder the acts of our parliaments from receiving the royal assent ; that we may not be engaged without our consent in the quarrels they may have with other nations ; that they may not obstruct the meeting of our parliaments, nor interrupt their sitting ; that we may not stand in need of posting to London for places and pensions, by which, whatever particular men may get, the nation must always be a loser, nor apply for the remedies of our grievances to a court, where for the most part none are to be had. On the contrary, if these conditions of government be enacted, our constitution will be amended, and our grievances be easily redressed by a due execution of our own laws, which to this day we have never been able to obtain.’<sup>1</sup> ‘This limitation will secure to us our freedom and independence. It has been often said in this house, that our princes are captives in England ; and indeed one would not wonder if, when our interest happens to be different from that of England, our kings, who must be supported by the riches and power of that nation in all their undertakings, should prefer an English interest before that of this country. ’Tis yet less strange, that English ministers should advise and procure the advancement of such persons to the ministry of Scotland, as will comply with their measures and the King’s orders ; and to surmount the difficulties they may meet with from a true Scots interest, that places and pensions should be bestowed upon parliament-men and others : I say, these things are so far from wonder, that they are inevitable in the present state of our affairs. But I hope they likewise shew us, that we ought not to continue any longer in this condition. Now this limitation is advantageous to all. The prince will

<sup>1</sup> Fletcher, *Political Works*, pp. 290-1. Speech by a Member of Parliament, 1703.



no more be put upon the hardship of deciding between an English and a Scots interest; or the difficulty of reconciling what he owes to each nation, in consequence of his coronation oath. Even English ministers will no longer lie under the temptation of meddling in Scots affairs: nor the ministers of this kingdom, together with all those who have places and pensions, be any more subject to the worst of all slavery. But if the influences I mentioned before shall still continue, what will any other limitation avail us? What shall we be the better for our act concerning the power of war and peace; since by the force of an English interest and influence, we cannot fail of being engaged in every war, and neglected in every peace?''<sup>1</sup>

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By a stroke of the pen his proposals would have placed the executive under the immediate and absolute control of the Scottish Parliament. They were never actually carried; but two instalments were placed on the statute-book which, unless the Union had been accomplished, would have made it necessary to carry them all. The first was an 'Act of Peace and War' declaring that 'No person being King of Scotland and England shall have power of making war . . . without consent of Parliament, and that no declaration of war without consent aforesaid shall be binding on the subjects of his kingdom.' The second was a measure providing that ambassadors representing Scotland and accountable to the Parliament of Scotland should be present whenever the King had occasion to treat with foreign princes or states.

Measures  
actually  
carried.

With his separate parliaments, executives, and ambassadors, competent to declare peace with the enemies of England, Fletcher now dropped the pretence that one titular sovereign could avail to unite

Proposal  
of Fletcher  
to separate  
the Crown  
of Scot-  
land and  
England.

<sup>1</sup> Fletcher, *Political Works*, pp. 342-4. Speech by a Member of Parliament, 1703.

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two commonwealths. ‘No man in this house is more convinced of the great advantage of that peace which both nations enjoy by living under one prince. But as on the one hand, some men for private ends, and in order to get into offices, have either neglected or betrayed the interest of this nation, by a mean compliance with the English court; so on the other side it cannot be denied, that we have been but indifferently used by the English nation. I shall not insist upon the affair of Darien, in which by their means and influence chiefly, we suffered so great a loss both in men and money, as to put us almost beyond hope of ever having any considerable trade; and this contrary to their own true interest, which now appears but too visibly. I shall not go about to enumerate instances of a provoking nature in other matters, but keep myself precisely to the thing we are upon. The English nation did, some time past, take into consideration the nomination of a successor to that crown; an affair of the highest importance, and one would think of common concernment to both kingdoms. Did they ever require our concurrence? Did they ever desire the late King to cause the parliament of Scotland to meet, in order to take our advice and consent? Was not this to tell us plainly, that we ought to be concluded by their determinations, and were not worthy to be consulted in the matter? Indeed, my lord Chancellor, considering their whole carriage in this affair, and the broad insinuations we have now heard, that we are not to expect her Majesty’s assent to any limitations on a successor (which must proceed from English council) and considering we cannot propose to ourselves any other relief from that servitude we lie under by the influence of that court; ’tis my opinion, that the house come to a resolution, “That after the decease of her Majesty, heirs of her

body failing, we will separate our crown from that of England.”<sup>1</sup>

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Fortune indeed had, at this juncture, placed a powerful weapon in the hands of the Scottish Parliament. The joint settlement effected by both Parliaments at the Revolution had provided that the descendants of Mary or Anne should succeed to the Crown. Mary left no children, and on the death in 1700 of William, Duke of Gloucester, the only surviving son of the Princess Anne, the whole question of the succession was reopened. In 1701 the English Parliament passed the Act of Settlement fixing the succession of the Crown of England and Ireland upon Sophia, Electress and Duchess Dowager of Hanover, a grand-daughter of James I., the senior descendant of that sovereign who happened to profess the Protestant religion. The Scottish Parliament, quick to perceive the advantage which the necessity for amending the Act of Succession had given them, declined to follow suit. In 1703, to the urgent demands of the English Ministry that the Crown of Great Britain should be settled on the Electress Sophia, they replied by passing an Act of Security which provided that at the death of Queen Anne the Scottish Parliament should meet and nominate a Protestant successor of the Royal line of Scotland, but not the same person as succeeded to the English throne, unless during Her Majesty's reign such conditions of government were settled 'as may secure the honour and sovereignty of this Crown and Kingdom the freedom, frequency and power of Parliaments . . . the religion, liberty and trade of the nation from English or any foreign influence.'

Act of Security passed by Scottish Parliament 1703, providing for separation of Crowns on death of Queen Anne, failing acceptance by England of Scottish demands.

1701.

That the Scottish Parliament recognized that such an event meant war with England is evident from

Scottish Parliament prepare for war with England.

<sup>1</sup> Fletcher, *Political Works*, pp. 301-3. Speech by a Member of Parliament, 1703.

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The  
English  
Govern-  
ment  
forced by  
fear of  
invasion  
to allow  
the Act  
of Security  
to become  
law.

the fact that they also provided for arming the Protestant 'fencible men of the Kingdom.' 'If we are not rich enough,' said Fletcher, 'to pay a sufficient number of standing forces, we have at least this advantage, that arms in our own hands serve no less to maintain our liberty at home, than to defend us from enemies abroad. Other nations, if they think they can trust standing forces, may by their means defend themselves against foreign enemies. But we, who have not wealth sufficient to pay such forces, should not, of all nations under heaven, be unarmed. For us then to continue without arms, is to be directly in the condition of slaves: to be found unarmed in the event of her Majesty's death, would be to have no manner of security for our liberty, property, or the independence of this kingdom. By being unarmed, we every day run the risk of our all, since we know not how soon that event may overtake us: to continue still unarmed, when by this very act now under deliberation, we have put a case, which happening may separate us from England, would be the grossest of all follies. And if we do not provide for arming the kingdom in such an exigency, we shall become a jest and a proverb to the world.'<sup>1</sup> To this Bill the High Commissioner, acting on instructions from the English Government, refused the Royal assent. The Scottish Parliament, however, declined to grant supplies, thus leaving the Scottish forces unpaid. The news of Blenheim had not arrived, a French invasion was expected almost hourly, and Godolphin persuaded the English Government to yield. By touching the Bill with the sceptre the High Commissioner placed on the Scottish statute-book a measure which not merely provided for the separation of the two Crowns, but contemplated war between the two kingdoms. England could scarcely

1703.

<sup>1</sup> Fletcher, *Political Works*, pp. 308-9.

allow matters to stand there unless she was prepared to face a return to the days when France could always count upon dividing Britain against herself. In Scotland, as Lord Haversham said in the English House of Lords, 'there will never be wanting all the promises and all the assistance France will give.'<sup>1</sup>

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The crisis was precipitated by an act of vengeance on the part of the moribund Darien Company, which induced the Scottish Government to seize an English East Indiaman in the Clyde. Convicted of piracy on the evidence of a negro, the captain and several of the crew were hanged. The two nations were on the brink of war, but fortunately the English Parliament kept its temper and contented itself with declaring that unless the Scottish Succession was settled by Christmas Day, 1705, Scotsmen were to be held as aliens and incapable of inheriting lands; that no arms or horses were to be exported to Scotland, and that no Scottish cattle, linen, or coals were to be imported into England. The same Act, however, empowered the Queen to appoint commissioners to treat for union. The Scots 'had endeavoured to coerce the English into giving them commercial privileges. Now the English were putting pressure on the Scots to make them accept a complete union.'<sup>2</sup>

The English Parliament retaliates, but opens negotiations for union.

What the Scottish Parliament desired was not union, but the opening of the English markets to Scottish commerce, and freedom to trade with the English colonies in America and with the Far East, all which they hoped to enjoy without any curtailment of their own autonomy. These hopes were expressed in an amendment moved by the Duke of Hamilton to the Act authorizing the appointment of Scottish Commissioners to negotiate with those from England, 'That the union to be treated on should no ways

Attempts to reconcile Scottish independence with the English connection.

<sup>1</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 191.

<sup>2</sup> *Ibid.* p. 192.

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derogate from any fundamental laws, ancient privileges, offices, rights, liberties, and dignities of the Scots Nation.' To the same effect was a resolution moved by the Marquis of Annandale in the following year, when the report of the Commissioners was considered by the Scottish Parliament. 'That we are willing to enter into such an Union with our neighbours of England, as shall unite us entirely, and after the most strict manner in all their and our interests or successions, wars, alliances, and trade, reserving to us the sovereignty and independency of the Crown and Monarchy, and the ancient privileges and immunities of the kingdom, and the constitution and frame of the government both of church and state, as they stand now, established by our fundamental constitution, by our Claim of Right, and the laws following thereupon.' As Daniel Defoe remarked: "No incorporating union" was the word—"Let us have an Union with England with all our hearts; but no incorporation—Let us keep our Parliament—keep our Sovereignty—keep our independency—keep our constitution, and for all the rest we are ready to unite with you, as firmly as you can devise." Such, indeed, was the nature of an arrangement advanced by the Scottish Commissioners under the name of a 'Foederal Union.' It is important, however, not to be misled by terms. The plan proposed was in no sense a federal union, but merely a *zollverein* or customs convention, which left untouched the vital question who was to control defence and foreign affairs. It was but one of many attempts to settle by contract between two states what in fact could only be settled by the creation of a single state claiming the unlimited obedience of the citizens in both.

Fletcher's  
proposal  
for solving  
the  
problem.

The difficulties were such as must recur every time the necessity arises for extending the principle

of the commonwealth, and Fletcher in his writings has left proposals for their solution which throw much light on the working of his mind. According to these proposals Europe was to be divided into ten provinces, and each province into ten or twelve sovereign republics modelled on the pattern of Greek city states. Those suggested for the British Isles were to centre round London, Bristol, Exeter, Chester, Norwich, York, Stirling, Inverness, Dublin, Cork, Galway, and Londonderry. Concord between these sovereign republics was to be secured in each province by a common prince, but how he was to secure it the author of the proposal failed to explain. He was not, however, the last to argue that one titular crown will suffice to maintain the unity of dominions whose separate sovereignty has been recognized as absolute and complete.<sup>1</sup>

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That the Scottish Parliament included a mind more in touch with realities is shown by a speech from Seton of Pitmadden. 'My Lord, I am sorry that in place of things, we amuse ourselves with words; for my part, I comprehend no durable union betwixt Scotland and England, but that expressed in this Article by one kingdom, that is to say, one people, one civil government, and one interest. It is true, the words, Foederal Union, are become fashionable, and may be handsomely fitted to delude unthinking people; but if any member of this House will give himself the trouble to examine what conditions or articles are understood by these words, and reduce them into any kind of foederal compacts, whereby distinct nations have been united, I will presume to say, these will be found to be impracticable, or of very little use to us. But to put that matter in a clear light, these queries ought to be duly examined.

Statement  
of the  
real  
position  
by Seton  
of  
Pitmadden.  
1706.

<sup>1</sup> Fletcher, *Political Works*, p. 448, 'Account of a Conversation regarding a Right Regulation of Government.'

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. . . Whether there can be any sure guaranty projected for the observance of the articles of a foederal compact, stipulated betwixt two nations, whereof the one is much superior to the other in riches, numbers of people, and an extended commerce? Whether the advantages of a Foederal Union do balance its disadvantages? Whether the English will accept a Foederal Union supposing it to be for the true interest of both nations? Whether any Foederal compact between Scotland and England is sufficient to secure the peace of this island, or fortify it against the intrigues and invasions of its foreign enemies? And, whether England, in prudence ought to communicate its trade and protection to this nation, till both kingdoms are incorporated into one?'<sup>1</sup>

Fears for the future of Scottish nationality examined in the light of subsequent events.

The Scottish Commissioners in fact asked for a *zollverein* which would establish freedom of trade between Scotland, England, and the colonies. The English Commissioners on their part were ready to concede those privileges, not, however, by way of treaty, as the Scots proposed, but only as the result of a union which would incorporate the Scots and English as citizens of one State. And that was the solution which Scotland was driven unwillingly to accept; 'I see the English Constitution remaining firm,' protested Lord Belhaven, 'the same Houses of Parliament, the same taxes, the same customs, the same excises, the same trading companies, the same municipal laws and courts of judicature; and all ours either subject to regulations or annihilations, only we have the honour to pay their old debts, and to have some few persons present, for witnesses to the validity of the deed, when they are pleased to contract more.' The complaints of Belhaven had their justification in rash utterances such as those attributed by Fletcher to Sir Edward Seymour:

<sup>1</sup> Speech by Seton of Pitmadden, November 1, 1706.



‘What a pothor is here about an union with Scotland, of which all the advantage we shall have, will be no more than what a man gets by marrying a beggar, a louse for her portion.’<sup>1</sup> Such happily was not the general attitude of Englishmen towards the Scots. Beneath the antipathies which ruffled the surface was a sense of mutual affection and respect which made the prospect of an internecine war hateful to both alike. Common responsibility for the welfare of a common state was alone needed to develop the patriotism necessary to unite Scots with Englishmen in a single commonwealth. How little the event has justified the fears of Belhaven may be judged from the remarks of a modern American observer: ‘The Act of Union preserved the ecclesiastical and legal institutions of Scotland; and at the present day she has her own established church, which is Presbyterian; her own system of education, which is quite different from the English; and her own system of law, based upon the Civil not the Common Law, and adorned by a nomenclature so disfigured as to pass for her own: With such differences as these it has been not uncommon for Parliament, even where the same legislative principles were to be applied on both sides of the Tweed, to enact them in separate statutes, each adapted to the institutions of the country in which it is to operate. Socially, also, the fusion has not been complete. Every Scotchman is an Englishman, but an Englishman is not a Scotchman. The Scotch regard themselves as an elect race who are entitled to all the rights of Englishmen and to their own privileges besides. All English offices ought to be open to them, but Scotch posts are the natural heritage of the Scots. They take part freely in the debates on legislation affecting England alone, but in their opinion acts

<sup>1</sup> Fletcher, *Political Works*, p. 411, ‘Account of a Conversation regarding a Right Regulation of Government.’

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## V



Effect of  
the Union  
in creating  
a new  
state.

confined to Scotland ought to be, and in fact they are in the main, governed by the opinion of the Scotch members. Such a condition is due partly to the fact that Scotch institutions and ideas are sufficiently distinct from those of England to require separate treatment, and not different enough to excite repugnance. It is due in part also to the fact that the Scotch are both a homogeneous and a practical people, so that all classes can unite in common opinions about religion, politics, and social justice.<sup>1</sup>

The real nature of the transaction is explained in a few words by the greatest living authority on the British Constitution. 'Though the fact is often overlooked, the Parliaments both of England and Scotland did, at the time of the Union, each transfer sovereign power to a new sovereign body, namely, the Parliament of Great Britain.'<sup>2</sup> In other words, a new state was created with a new sovereignty of its own: the two separate states with their two separate sovereignties vanished. The last act of the two sovereignties was to order their respective subjects to behave in future as citizens of a common state, an order which was obeyed, although to a large number it was unpalatable. Nothing but time was wanted to create the habit of obedience to the new Commonwealth, because that habit was fostered by the exercise of a responsibility imposed on the inhabitants of both kingdoms. There was not, as in Ireland, an overwhelming section of the population excluded from full participation in the life of the Commonwealth. The transaction, moreover, partook in no essential respect of the nature of a contract. The only parties between whom a contract could have been made were the two sovereignties, which the moment the transaction was completed themselves vanished, and with

<sup>1</sup> Lowell, *The Government of England*, vol. i. pp. 138-9.

<sup>2</sup> Dicey, *The Law of the Constitution*, pp. 66-7.

them a contractual condition which was merely temporary. Henceforth the bond by which a Scot and Englishman were united was the claim made by a commonwealth, in which both were embraced, to the unlimited devotion of each.

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V

To none of the Commissioners, however, does it seem to have occurred that the continued existence in Edinburgh and London of provincial executives and legislatures, entrusted respectively with interests which were strictly Scottish and strictly English, was not incompatible with the policy of merging Scots and Englishmen in a common state. The possibility of distinguishing local from general interests had not as yet been realized. The truth is that statesmen of that era had far less experience to draw upon than those who have followed the establishment of the American Republic. To the ministers of Queen Anne the only alternative to absolute separation was to centralize all government, local as well as imperial, at Westminster. The American method of preserving existing state governments as local organs of the wider state into which they were merged had yet to be placed on the political market by its discoverers. But the sovereign merit in the architects of this union was their uncompromising rejection of shams. As usual, there were not wanting Englishmen of the type of Gowen and Seymour who comprehended so ill the principles for which their race stood as to think that Scotland could permanently be treated as a means to English ends. Across the border were the Fletchers and Belhavens, specimens of a no less constant type, who wanted to retain the essential condition of separation by a contract dignified by the name of a Foederal Union. Had either of these counsels prevailed, Scotland would have been linked to England by bonds similar to those which connected the confederate states with Athens. Upon either principle the two

Why  
possibility  
of  
preserving  
the English  
and  
Scottish  
Parlia-  
ments as  
subordinate  
local legis-  
latures in  
the new  
Common-  
wealth  
of Great  
Britain  
was not  
considered.

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Commonwealths were to live apart, and a false union which purported to unite them without impairing the sovereignty of either would infallibly have ended in the domination of the weaker by the stronger, a domination which would have been exercised, as in Ireland, in part by corruption and in part by force. Judging from Ireland the results would so have embittered the relations of the two peoples as to have made the final achievement of union at a later date immeasurably harder. As it was, the citizens of both countries faced facts, and above all things faced them in time. The fears of Belhaven that the Scots would lose their national character have been plainly falsified by events. To a great extent they have dominated the polity in which they were merged. More than any other portion of Great Britain, Scotland has devoted to India and the great Dependencies the best of her sons, and has realized the sense of responsibility to the races of the other continents, which alone has made possible the inclusion of so vast a number of them within the limits of the British Commonwealth.

## NOTE A

SCOTLAND AND THE SCOTTISH PARLIAMENT IN  
THE MIDDLE AGES

See page  
261.

How  
Scotland  
in early  
times  
became  
a separate  
political  
unit from  
England.

When Scotland first came into touch with civilization it was, like the rest of Britain, inhabited by Celtic tribes. Roman and Saxon invaders in the dark ages alike failed to penetrate the Highlands, and till two centuries ago the tribal organization of society there remained intact. The Saxons, however, like the Romans, conquered the Lowlands, filling the South-East of Scotland as far as the Forth with a people who were largely Teutonic. The modern counties of Roxburgh, Berwick, Haddington, and Midlothian were indeed part of the English Kingdom of Northumbria in the age of the Heptarchy. About the time of the Saxon invasion there arrived from Ireland a tribe called the Scots, who settled in Argyllshire, and some

centuries later the East coast, North of the Forth, was colonized by Norsemen. In the eighth and ninth centuries these two races, together with the aboriginal population of the Highlands, both Pictish and Celtic, were united under the King of the Scots. Gradually they pushed their frontiers South till in 1034 the Duncan, who figures in Shakespeare's tragedy of *Macbeth*, became King of the whole mainland, North of the Tweed, which thereafter was recognized as the frontier between England and Scotland. In 1072 William of Normandy, having completed the conquest of England, invaded Scotland and exacted homage from the Scottish King, Malcolm Canmore, without, however, achieving an effective conquest of the country.

Malcolm had married an English wife, Margaret, granddaughter of Edmund Ironside, a descendant of Alfred the Great, who had fled from the Normans to seek the protection of the Scottish King. Regarding herself as a missionary of English civilization, she devoted herself to anglicizing the Scots, an enterprise in which she was doubtless assisted by those of her countrymen who were driven by the Normans across the border, and also by the growth of commerce between the Eastern ports of the two kingdoms. Although Scotland remained a separate kingdom, the English law, language, and religion began gradually to prevail over those of the Celt.

To consolidate the inhabitants of Great Britain into one state was a natural ideal and one sure to commend itself to a vigorous king who ruled the larger part of the island. The turbulent state of the Welsh Marches were a menace to order in England itself, and led to the conquest of the Welsh tribes by Edward I. Wales remained a dependency of England till the time of Henry VIII., and was happier than Ireland in this, that the kings made the law there supreme as in England itself. In 1536 Welsh members were summoned to the English Parliament, so that, as the sovereignty passed from the King to Parliament, it passed to the Welsh as well as to the English people, and thereafter no separate constitutional question ever arose in respect of Wales.

At first Edward I. set to work to incorporate Scotland by pacific means. His plan, cordially accepted by both countries, was to unite the Crowns by marrying his infant son to the Scottish Queen, a child of six, known as the Maid of Norway. The scheme, however, was frustrated by her premature death, and from a number of rival claimants to the throne Edward selected John Balliol, who did homage to the English monarch for his crown. Balliol, however, intrigued with France and rebelled. Henceforward the feeling that Scotland might stab them in the back when struggling with France became the

Anglicizing influence of Queen Margaret in the eleventh century.

Incorporation of Wales by effective conquest in the English Commonwealth.

Failure of Edward I.'s attempt to incorporate Scotland.

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V

nightmare of English kings. Edward I. promptly dethroned Balliol, conquered Scotland as far North as Elgin, and then attempted to deal with it as he had dealt with Wales. In the place of a vassal king he now appointed his own viceroy, and Scottish representatives were summoned and sat in his parliaments at Westminster. One of them was Robert the Bruce, who presently headed a revolt against Edward. The great King died before he could crush him, leaving his son Edward II. to lead into Scotland the forces he had collected at Carlisle. The struggle continued till at Bannockburn Bruce defeated Edward II. and separated the Crowns of Scotland and England once more, a separation which was to continue for close on three centuries.

Mutual  
hostility of  
Scotland  
and  
England  
a danger  
to their  
common  
liberty.

Henceforward the two kingdoms were frequently at war, and the border between them was a scene of perpetual conflict. French influence was paramount North of the Tweed, and the Courts of Scotland and France were in constant alliance. The fear of conquest by any power but England never figured in the Scottish imagination, for no Continental monarch would have thought of invading Scotland, unless, like William of Normandy, he had mastered England first of all. To the Scots England was their only enemy, and they can scarcely have realized that English liberty was the bulwark of their own, or that if they helped to destroy it they would be establishing on their Southern frontier a foreign and much more dangerous foe.

The  
Scottish  
Parlia-  
ment  
in its origin  
a copy  
of the  
English  
Parlia-  
ment.

The parliamentary union of the two kingdoms effected by Edward I. left, however, one important trace on Scottish institutions, which survived the predominant influence of France. The Great Council of Scotland had already been modelled upon that of England and was an assembly of tenants in chief, lay and clerical. As a member of the parliaments of Edward I., Robert the Bruce had seen English burgesses summoned to their councils, and as King of Scotland in 1326 he, like Edward, finding himself in need of money, summoned burgesses to a Scottish parliament at Cambuskenneth. A century later James I., a prisoner in England in the days of Lancastrian constitutionalism, tried on his return to Scotland to strengthen the popular element in Parliament as a counterpoise to the influence of the barons. To this end he enacted that the small barons and free tenantry, a class corresponding to the country gentlemen of England, need not attend in person, provided that they sent representatives. But it was not until 1587 that the country gentlemen were definitely forbidden to sit in person and ordered to send representatives. By then the representation of the burgesses was firmly established. Thus before the union of the Crowns the Scottish parliament consisted of lords temporal and spiritual, who appeared in person and sat in their own right because they were few enough to do so, and also of

representatives of the country gentry and of the mercantile interests in the towns.

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V

Before the union of the Crowns in 1603, and indeed for some time after, the Scottish parliament was no more than a faint reflection of its English original. Like the French *parlements* it sat to register rather than to make the law, and acquired no real sovereignty for the simple reason that there was none to acquire so long as the Lowland and Highland communities adhered, the one to a feudal, the other to a tribal condition of society. The conditions of statehood were no more realized in Scotland while under separate kings than in England before the Norman Conquest. The Scottish monarchy never finally mastered the barons and chiefs, and the King's writ was never sure of running until James VI. and his successors succeeded to the English Crown and were able to employ the resources of the English Commonwealth to enforce the obedience of their Scottish subjects. "The greatest hindrance to the execution of our lawes in this countrie," wrote James VI., "are these heritable Shiredomes and Regalities, which being in the hands of the great men, do wracke the whole countrie." It was more easy to ordain frequent sessions of "the Chancellor and discreet persons," to forbid riding to the court "with multitudes of folkis na with armys," and to threaten the punishment of negligent sheriffs, than to carry out these schemes. The only guarantee for their receiving any obedience lay in the personal strength of the king.<sup>1</sup> Till the Reformation the history of Scotland is a series of factious struggles between chiefs and nobles for the control of a monarchy in which the monarch himself was often no more than a pawn—to story-tellers like Scott, an inexhaustible mine, but to students of history as tedious as the battles described by Homer and Virgil, because success for the moment depended upon the prowess of individual leaders. Unlike England, Scotland failed to develop for herself an effective monarchy on which to found the supremacy of law. Where no true imperium existed there was none for the Scottish parliament to assume, and the first condition necessary for the development of a commonwealth was lacking. It is the abuse of sovereignty, not sovereignty itself, that is opposed to freedom.

In these disordered conditions the nobles were able about 1367 to establish a procedure which scotched the popular element in Parliament and arrested the growth of its influence. Parliament itself only met at the opening and close of each session. The actual transaction of business was delegated to a committee known as the Lords of the Articles, in the selection of which the representative members had no voice. On the

Failure of the Scottish monarchy to establish the supremacy of law prevented the growth of parliamentary institutions as in England.

How the practice of delegating to the Lords of the Articles arrested the growth of the Scottish Parliament.

<sup>1</sup> Rait, *The Scottish Parliament*, pp. 79-80, quoting King James VI., *Basiliikon Doron*, Book ii.

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V

last day of the session Parliament met to ratify or reject the measures framed by the Lords of the Articles. The procedure by which this body was appointed varied until the union of the Crowns, when it was finally settled in 1612 by James I. and VI., that the bishops should select certain lords and the lords certain bishops. The lords and bishops thus chosen were then to select suitable men from the popular representatives. Such a committee was the instrument, not of Parliament, but of the ruling faction of nobles when the King was weak, or of the King himself when he was strong.

## NOTE B

EXCLUSION OF SCOTLAND BEFORE THE UNION FROM TRADE  
WITH THE ENGLISH COLONIES IN AMERICA

See page  
272.

The following is an extract from the minutes of the Privy Council, relative to a proposal that the dissolution of the parliamentary union affected at the Restoration should not involve the exclusion of Scotland from trade with the English colonies.—

Whitehall, 22 November : 1661.

(The Committee to consider Scotland's position under the Navigation Act receive an unfavourable report from the Commissioners of the Customs under four heads. No. 2 concerns the Plantation trade :—)

(2) They by this Liberty may trade to the Plantations which are absolutely English which will bring infinite losse to his Majestie and as much prejudice to the English Subject.

1st. They may carry, by this Admittance, all the Growth of these Plantations into fforaine parts, which must lessen his Majestys duties and by this they may carry away the English mens Estates, who haue propriety both in goods and Lands, by whose Cost and Industry they haue beene Planted, and who every yeare looke for the returnes as well to Improve their Estates as pay their Debts,

(2ly) They may serue all forraine Parts (as Germany, Holland &c : ), with the fruits of the English Labours and make Scotland the Magazine, and leaue this Nation to its home Consumption, and the King in his Duty, and the Merchant in his returnes fall short in their expectation, and perhaps the Proprietor foret to goe into Scotland to looke his Estate.

(3ly) If they should say that they would come for England, Ireland, or Wales &c : They can giue no security either to the Gouvernor there, or the Officers of the Customes here, Where they haue no Interest, they cannot be responsible, and their Bonds are worth little, if once gonn, and the forfeiture is little



worth to his Majestie they being as forreigners to this Nation, being now vnder our lawes and Gouernment In fine the Plantations are his Majestys Indies without Charge to him rayssed and supported by the English Subjects, who Imploy aboue 200 Sayle of Good Shippes every yeare, breed abundance of Maryners, and begin to growe into Comodoties of great value and Esteeme, and though some of them continue in Tobacco, <sup>sett</sup> vpon the Returne hither it smells well and payes more Custome to his Majestie then the East Indies foure times ouer, .

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(And as it appears that an Act of Parliament would be necessary for granting such liberty to the Scots, the order of 30 August in their favour is accordingly revoked, and they are referred to Parliament for redress.)<sup>1</sup>

Similar objections were raised to the 'Act for a Company See page 277. Trading to Affrica and the Indies' passed by the Scottish parliament in 1693.

'The matter was also considered in relation to the Plantation trade. Randolph, government agent in the Colonies, wrote soon after the Act was passed, that the Scots, "under pretence of Erecting an East India Company in y<sup>e</sup> Kingdome . . . do Engage themselves with Great Sums of money in an American Trade; a Trade which has already for Several Years been carried on by Scotchmen." He feared that they might make a settlement in some unappropriated spot near Pennsylvania, or in an island near the coast, which might become "a staple not only of all Sorts of European Manufactures, but also of the Enumerated Plantation Commodities." Like the East India Company, Randolph used the Scots project as a stalking horse for impressing on the government the necessity for those measures which he desired, the tightening up and stricter enforcement of the Navigation Acts, and the necessity of joining small proprietary colonies to the government of some province directly under His Majesty's authority. The Lords, influenced by the Customs Commissioners, also paid some attention to this aspect of the Scots Act. They ordered the Commissioners to attend the House, "to give an Account, whether as the Law now stands, there be a sufficient Power, in Carolina, Maryland, Pennsylvania and other Plantations where there are Proprietors to collect the King's Duties there: and whether there be the same Security to prevent the Inconveniences that may arise to the Proprietors and Planters there, from the Act of Parliament in Scotland." These inquiries were followed by the "Act for preventing Frauds and Regulating Abuses in the Plantation Trade." Besides making the regulations more stringent, with a view to checking the existing Scottish trade, the Act took some precautions against a Scottish settlement being founded, by declaring that no land in the colonies was to be sold to

<sup>1</sup> Acts of the Privy Council (Colonial), 1661, vol. i. pp. 318, 319, 320.

## CHAP.

## V

any but natives of England, Ireland, or the Plantations. The agitators against the Scots Act connected with the Plantation trade were therefore more successful than the traders to the East. Parliament considered the Plantation trade of greater importance to England than the Indian trade, as in America there was a better market for England's chief product, woollen cloth; and also the returns from the colonies were esteemed of more value than the goods which were brought from the East. They were therefore anxious both to stop the Scottish trade with the West, which already went on, and also to prevent the Scots from securing any land near the colonies, where they might establish a dépôt for colonial goods, and from which, with the help of Dutch shipping, Europe might be supplied.<sup>1</sup>

## NOTE C

ATTITUDE OF COMMERCIAL INTERESTS IN ENGLAND TOWARDS  
SPANISH TERRITORIAL CLAIMS IN THE SEVENTEENTH CENTURY

See page  
281.

The commercial interests in England would have had no compunction whatever in seizing on Spanish territory if their government had been prepared to back them with its fleets, for on September 16th, 1698 the English Council of Trade passed a resolution 'that the said country has never been possessed by the Spaniards and that England should instantly seize Golden Island and the part opposite to it on the Main to the exclusion of all Europeans . . . lest the Scotch Company be there before us, which is the utmost importance to English trade.'

<sup>1</sup> Keith, *Commercial Relations of England and Scotland, 1603-1707*, p. 173.

## CHAPTER VI

### THE AMERICAN COLONIES<sup>1</sup>

How the idea grew up that a balance of mutual interests would suffice to maintain the connection between England on the one hand and Scotland and the colonies on the other, was explained in Chapter IV., as well as the political and commercial system to which that idea led. The conditions, however, to which the system was applied were always changing; the balance it was designed to maintain was for ever shifting. The system therefore had to be controlled, and, in the absence of any effective authority common to all the communities interested, the necessary control was exercised by the English Parliament. Shut out from any share in the control, the Scottish people naturally believed that the system operated to stifle their industries and commerce. This belief was in fact justified; the balance of interests could never remain a true one, and no sooner had the sovereignty passed from the King to the Scottish Parliament, than that body attempted to control the external relations of Scotland for themselves. The immediate result was a deadlock, which led to the complete abandonment, so far as the relations of England and

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Results  
of the  
last two  
chapters  
summar-  
ized.

<sup>1</sup> A grateful acknowledgment is again necessary to Mr. Beer for allowing copious extracts to be made from his works in the text and appendices of this chapter.

A very free use has also been made of recent researches of Mr. L. B. Namier in libraries and archives on both sides of the Atlantic. These have not as yet been given to the public, but Mr. Namier has kindly allowed them to be used.

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Scotland were concerned, of the whole principle which inspired the mercantile system. The union which followed was based upon the opposite principle that every inhabitant of Great Britain was to be considered as dedicated to the supreme interests of a common state claiming the obedience of all, irrespective of their individual interests. The relation of every Scot to every Englishman was henceforward to be the same as the relation of Scots to each other and of Englishmen to each other. The attempt to unite two commonwealths by a balance of their mutual interests had failed, and the opposite plan of uniting the citizens of both in one new and greater commonwealth on the principle of mutual obligation was accepted as the only alternative to an open conflict between them. In turning to the colonies, therefore, it will now be necessary after 1707 to speak of their relations to Great Britain, and not to England, as heretofore. Scottish ministers, indeed, played almost as large a part as those born south of the Tweed in the events which led to the rupture with the American colonies.

Freedom of adaptation to a new environment in America rendered possible by the institution of many small self-governing communities.

At the close of this period there were in all seventeen colonies,<sup>1</sup> with assemblies which exercised in strictly local matters a control greater if anything than that exercised by the people of Great Britain over domestic affairs in their own country.<sup>2</sup> It was in this liberty, acquired by the colonists from the first, of fashioning in the light of their own experience the rudiments of their new life, that the sovereign merit of the English system lay. It enabled them to adapt for themselves their own social system to novel surroundings, because it allowed them, not only to manage their own affairs in their own way, but also to group themselves

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv, p. 65.

<sup>2</sup> *Ibid.* p. 42.

into communities not too large for the purpose. The action not of one but of many popular assemblies was needed to adapt American society in detail to the variations of its widely different climates and soils. The plastic quality of English society, the freedom with which it was left to assume a shape complex and multiform as the conditions of the continent over which it was spreading, enabled it to secure a hold on America firmer than was ever secured by the societies of Spain, Holland, or France.

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But for this to be possible it was also necessary that Spain, Holland, and France should be kept in check. Here, however, the institution of local assemblies enabled the colonists to do nothing effective for themselves. To keep America for the colonists until they had time to establish English society there was recognized as a task beyond the powers of any but the Government of Great Britain itself. The colonists were given no share in the control of that Government. Whether it would have been possible to have included colonial representatives in the Imperial Parliament must always remain in the field of conjecture. That they were not so included every one knows, and the student of history will be justified in observing that, as they had no voice in the Government responsible for the Commonwealth as a whole, and as there was laid upon them no obligation to contribute effectively to its necessities, it was impossible that they should develop the same sense of responsibility in respect of its common interests as Englishmen or Scotsmen who shared in the control as well as in the burdens which it involved.

The colonists unable to share through their local assemblies in the larger tasks of the general Commonwealth. Their devotion to that Commonwealth therefore languished

These, however, were not the only tasks into which the colonial system failed to initiate the American colonists. Within areas vaguely described by their several charters they learned by making mistakes how to avoid mistakes, and because they

Through their numerous assemblies they were also unable to control interests

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common to  
America  
as a whole.

were able, through their local assemblies, to apply the lessons so learned, they developed a sense of responsibility to each other for doing so. By virtue of this power of self-adaptation each little community prospered and spread through the wilderness, till at length it found itself in contact with others. The moment this happened the colonies were faced by problems of a new order, those arising out of their mutual relations. Between two contiguous colonies it was necessary to draw boundaries and to determine exactly what territory belonged to each. Here was a question which neither could settle for itself. The Indians, moreover, could scarcely be expected to distinguish the colonies from each other, and, when exasperated by one, wrought havoc throughout the settlements, regardless of frontiers.

They  
failed  
there-  
fore to  
develop an  
American  
patriotism.  
Such  
public  
spirit as  
they  
developed  
was com-  
mensurate  
with the  
strictly  
local  
nature  
of their  
responsi-  
bilities.

In examining the American situation it is essential to realize the existence of interests such as these, narrower than the general interests of the British Commonwealth as a whole, but wider than the local interests of the several colonies. They belonged to the same order as those which in the last fifty years have called into existence the Governments of the Canadian Dominion, the Australian Commonwealth, and the South African Union. In the strictest sense they were the interests of the American colonists themselves, and touched them so vitally that they could hardly fail to recognize their existence. But under the colonial system they developed no organ through which to control them, and made no serious effort to do so. These strictly American affairs were left in the hands of the British Government, and the indifference of the colonists towards the general interests of the Commonwealth was scarcely more marked than their indifference towards those of America itself. The patriotism developed under the colonial system was confined to the colonial

areas, those in which the colonists were able to apply their experience and were responsible for doing so.

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As explained in Chapter IV., the policy of British statesmen towards the colonies was moulded by the conceptions of the commercial system. They left the colonists to concentrate their attention on the local affairs of their several communities, in the belief that Britain could bind them to herself by undertaking to defend them against foreign aggression, and by offering a preference to their raw products, in return for which she was to confine the market for those products to herself. This system was based on a false deduction from a true estimate of facts. In the seventeenth century it was rightly seen that for England the growth of her trade was henceforward the condition of her national existence. The habit, to which this led, of regarding trade as the end and object of national life, though natural and easily acquired, was none the less mischievous. English statesmen of the seventeenth century were not interested in colonial projects as an outlet for surplus population;<sup>1</sup> nor were they interested in colonies either as homes of freedom, or, except indirectly, as asylums for religious refugees. By the middle of the eighteenth century commercial interests had come to obscure all others in the minds of political thinkers. 'There is no Situation,' wrote William Burke, 'in which Wealth is not Strength, and in which Commerce is not Wealth. If Commerce is our Object, we know, and in all other Cases we can at best only guess what we acquire.'<sup>2</sup> 'Happily for this country,' says another writer, 'the Real and Substantial, and those are the Commercial Interests of Great Britain,

Imperial policy vitiated by commercial conceptions.

<sup>1</sup> See Note A at end of this chapter, p. 378.

<sup>2</sup> Burke, *An Examination of the Commercial Principles of the late Negotiation*, London, 1762, pp. 3, 4, quoted by Beer, *British Colonial Policy, 1754-1765*, p. 148.

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are now preferred to every other Consideration.’<sup>1</sup> Their tendency to think of trade as the ultimate goal of national policy was one that Cobden and his school unconsciously inherited from the exponents of the system they attacked.

One step in the downward path of error leads to another, and men who began by supposing that because trade was the condition, it must also be the object of national life, naturally assumed that the maxims and methods of commerce must be applied to the solution of political problems. Trade, as already observed,<sup>2</sup> depends on a community of material interests, and can only be established where such a community exists. The old colonial system was an unconscious attempt to apply this idea to the political relations of a group of self-governing communities. Britain was to unite them to herself, simply by maintaining conditions under which it would be for the material interest of all to remain united. Their mutual relations were to be those of partners held together by material interests for the purpose of business. It was like an attempt to base family life on an arrangement from which everything is eliminated but the marriage settlements. As in trade, the relations between the mother country and her colonies were from first to last to be governed by the notion of contract.

Colonists  
taught by  
the com-  
mercial  
system  
to regard  
their  
relation to  
Britain as  
based upon  
contract.

Such were the ideas of English statesmen, and American society was bred to them as a child is bred to the ideas of its parent. On colonial character they had the same kind of dominating influence. As early as 1633 Downing was urging that a new patent should be issued to Massachusetts, in which ‘the King “will be pleased to covenant to ayde and assist them, if need require ag<sup>t</sup>. all forreigne

<sup>1</sup> Whately, *The Regulations lately made Concerning the Colonies*, 1765.

<sup>2</sup> See above, p. 151.



enemies.”<sup>1</sup> By the middle of the eighteenth century the contractual idea had become ingrained in colonial opinion. “We have, by our own express consent, contracted to observe the Navigation Act, and by our implied consent, by long usage and uninterrupted acquiescence, have submitted to the other acts of trade, however grievous some of them may be.”<sup>2</sup> So, too, Stephen Hopkins in 1765: “The protection promised on the part of the crown, with chearfulness and great gratitude we acknowledge, hath at all times been given to the colonies.”<sup>3</sup>

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In the later stages of the controversy which preceded the Revolution the colonists were driven by the force of logic to question the title of the English Parliament to regulate their trade, and historians whose information is derived from contemporary pamphlets have explained the Revolution as largely a revolt against the Navigation Acts. As a matter of fact not only were the principles of the commercial system accepted by the colonists, but the system itself. In 1754 Franklin declared that the Americans did not complain of the taxes imposed, though they had no share in laying or disposing of them, and ten years later, Otis, the protagonist of the Revolution, wrote: ‘The act of navigation is a good act, so are all that exclude foreign manufactures from the plantations, and every honest man will readily subscribe to them.’<sup>4</sup> It was not the existing system, as in France, which provoked the Americans to revolt, but the attempt to change the system as they knew and understood it.

Claim of  
British  
Parliament  
to regulate  
their  
commerce  
accepted  
by the  
colonists.

The inherent defect of the system lay in the fact

<sup>1</sup> Beer, *Origins of the British Colonial System, 1578-1660*, p. 326.

<sup>2</sup> Adams, *Writings, IV.*, p. 113, quoted by Beer, *British Colonial Policy, 1754-1765*, p. 306.

<sup>3</sup> Stephen Hopkins, *The Rights of the Colonies Examined* (Providence, 1765), p. 9, quoted by Beer, *British Colonial Policy, 1754-1765*, p. 268.

<sup>4</sup> See Note B at end of this chapter, p. 380.

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In Britain  
responsi-  
bility to  
some  
extent  
corrected  
tendency  
of com-  
mercial  
system to  
corrupt  
public  
opinion.

that it was one which could not exist without control, and that control lay in the hands of only one of the parties to the bargain. Each side was so situated as to think mainly or exclusively of its own interest, which was but a part of the whole. There was no common control in which all shared, such as might compel them to think of the interests of all—of the interests, that is to say, of the Commonwealth as a whole. In Britain the results of the system were not seen at their worst, because the silent influence of responsibility was ever at work to correct and elevate public opinion. Statesmen like Chatham were the product of that influence. ‘In selecting Canada instead of Guadeloupe (for retention after the Seven Years’ War), which was the crucial point in the negotiations, Pitt was probably little influenced by the purely economic argument. To his large imagination, the prospect of a vast territorial increase of the Empire’s area appealed strongly. Although these negotiations of 1761 came to naught, they furnished the basis on which the final treaty of peace was concluded a year later.’<sup>1</sup> In a pamphlet of the time already quoted, which, according to Beer, reflects the views of Grenville himself, are to be found some glimmerings of the larger view. “‘Tho’ we resign a valuable Branch of Trade in their (the colonies’) Favour. . . . yet the Preference is given upon truly national Considerations, when the (British) Inhabitants of *America* and of *Europe* are looked upon as one People.”’<sup>2</sup> This was the ground frankly adopted by the party which supported in Parliament the retention of Canada and the cession of Guadeloupe. “‘Neither ought the value of any country to be solely tried on its commercial advantages;

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 158.

<sup>2</sup> *The Regulations Lately Made* (London, 1765), pp. 49-50, quoted by Beer, *British Colonial Policy, 1754-1765*, p. 221.

that extent of territory and a number of subjects are matters of as much Consideration to a state attentive to the sources of real grandeur as the mere advantages of traffic."<sup>1</sup> These arguments were . . . the general basis on which the statesmen of the day justified their choice of territorial acquisitions on the continent in preference to tropical expansion. Unquestionably the immediate advantage of British commerce was sacrificed to some future benefits. A broad policy resting on possible future advantages triumphed over a narrow policy of actual and immediate profits.'<sup>2</sup>

This tendency in English political circles to make human instead of material standards the measure of colonial values was too weak and came too late to save the situation. 'Colonies,' wrote an English official in 1765, 'are only settlements made in different parts of the world for the improvement of trade.'<sup>3</sup> This in a nutshell was the idea which inspired the old colonial system from the opening of the seventeenth century. The function of the colonies was not to extend English society to America, but to supply England with such materials as she could not raise for herself. 'This was the general standard by which the value of colonies was gauged until about 1745. According to it, the New England and Middle colonies were found wanting, while those in the West Indies stood the test best. Hence far more attention was paid to the island colonies than to those on the mainland. The former were considered pre-eminently the valuable colonies. The sugar trade occupied in foreign commerce a somewhat similar position to the woollen trade, being popularly considered a pivotal industry. In addition, the West

But even in Britain the materialistic tendencies of the system prevailed.

<sup>1</sup> *Parl. Hist.* 15, pp. 1271, 1272.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, p. 155.

<sup>3</sup> Whately, *The Regulations lately made Concerning the Colonies*, 1765.

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Effect of  
material-  
ism in  
Imperial  
policy on  
develop-  
ment  
of the  
colonies.  
(1) Slavery;  
(2) Prefer-  
ence  
for slave  
colonies.

Indian interest was strongly represented in England, many of the governing classes having estates in those colonies.<sup>1</sup> Hence the attitude of suspicion and dislike towards the New England colonies which prevailed amongst English statesmen in the seventeenth century. These populous and powerful colonies, the national and typical offspring of England herself, would not square with the commercial system, and Sandwich did not scruple to tell Charles II. that it was 'advisable to hinder their growth as much as can be.'<sup>2</sup> Such continued to be the tendency of official opinion until in the face of discouragement New England had grown so populous as to offer a valuable market for the products of British industry.

This failure of English statesmen to estimate rightly political values inflicted no injury on the Northern colonies which could not be remedied by time. With the Southern colonies it was otherwise. In order to make them yield the tropical products, which in the view of European statesmen rendered colonies worth having, myriads of negroes were poured into these plantations. Since the continents were first opened and their inhabitants brought into contact, the most vital of all secular needs has been for the statesmanship which could avoid or heal the injuries inflicted on each other by the various levels of society. Mutual intercourse between them is now inevitable, and so long as they come into contact, as Britain and India have done, edge to edge, the evil consequences are such as foresight and perseverance can surely turn to good. But the mutual corrosion set up when radically different societies are laid face to face is beyond the reach of human intelligence to control. No reasonable person will now deny that the plantation of an African society in America, side

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 135.

<sup>2</sup> See Note C at end of this chapter, p. 383.

by side with European society, was one of the incurable blunders of history. It is as well, therefore, to note that it was the direct result of a habit in statesmen of valuing new countries, not in terms of men but in terms of wealth, for the products they might draw from them, and not for the society they might plant there. To ignore ultimate values because they are imponderable and to consider nothing but what can be handled and measured with accuracy, is a natural failing of the human mind. The immediate profits of slavery were plain and easy to reckon, the future results to American society distant and incalculable. Hence the practical conclusion deduced by Burke that Guadeloupe with its slave plantations was more to be valued than half the continent of North America.

As with Scotland before the Union, no appropriate place was found for the Northern colonies in the old colonial system. For all its outward symmetry the philosophy which inspired it was too narrow for the facts. Like their climate and population, the goods they produced and consumed most nearly resembled those produced and consumed by the English themselves. New England was justified in the name bestowed upon it, and the Puritans who settled there soon found that it suited them to trade direct with Europe just as they would have done if they had remained at home. It was to their advantage to import such products from Europe as they needed, and to pay for them with sugar and tobacco from the West Indies and colonies to the South. Individual traders in New England had thus a private interest in ignoring the restrictions of the Navigation Acts,<sup>1</sup> which was scarcely likely to be restrained by the public consideration that England bore the charge of Imperial defence. But once organized,

Result of system in Northern colonies to create a motive for smuggling

<sup>1</sup> See Note D at end of this chapter, p. 384.

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Lack of  
adminis-  
trative  
machinery  
in decen-  
tralized  
British  
Empire,  
through  
which to  
enforce  
trade  
regulations.

Control of  
internal  
develop-  
ment  
inseparable  
from  
control  
of external  
trade.  
The com-  
mercial  
system  
ignored  
this fact.

the illicit trade was by no means limited to the requirements of the colony in which it centred. New England, like Scotland before the Union, became a general artery of illegal commerce between all the colonies and foreign states. The loss to the English customs revenue due to the smuggling trade of New England was reckoned at £100,000 per annum.<sup>1</sup>

It was easy enough for the English Parliament to pass laws in restraint of trade. The difficulty began when the English Government addressed itself to the task of enforcing them. The customs officials in America were of course appointed from England, and when they prosecuted a colonial merchant before a colonial jury for some contravention of the Navigation laws they stood but a poor chance of securing a conviction.<sup>2</sup> An attempt was made to overcome the difficulty by the establishment in the colonies of local Admiralty courts, that is to say of Imperial as opposed to colonial courts, and the English navy was used to seize colonial ships which were trading in contravention of the Navigation Acts. The attempt to control the system from England produced the same results as when France had tried to govern Canada from Paris. Traders who were interested in violating Imperial laws corrupted the Imperial officers appointed to enforce them.<sup>3</sup>

In the theory which underlay the system, a line was drawn between the internal affairs of the colony, which were left to the control of its own assembly, and external affairs, which remained under the control of the British Government. Oversea trade was included in the category of Imperial affairs. But the truth was that internal development was inseparably connected with external trade;<sup>4</sup> the

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. ii. p. 269.

<sup>2</sup> See Note E at end of this chapter, p. 386.

<sup>3</sup> See Note F at end of this chapter, p. 387.

<sup>4</sup> Beer, *British Colonial Policy, 1754-1765*, p. 204.

system worked only so long as it could be freely evaded in the colonies. Britain, on the other hand, could only enforce the system by adopting a centralized machinery appropriate only to such empires as those of Spain and France and contrary to the spirit of the institutions which she had planted in America. The upshot was that the system was largely inoperative. A great volume of illicit trade sprang up between foreign states and the British colonies, but especially with New England.

This trade, while contributing greatly to the material prosperity of the colonies, was deeply demoralizing from a national point of view. To ignore the law whenever it was profitable to do so became a fixed habit of the trading community, which bore disgraceful fruit when the Commonwealth was struggling for existence with its ancient foes. The advantage of the British Commonwealth lay in the power of its navies, maintained by the British taxpayer with no perceptible charge to the colonies, to prevent France and Spain from sending supplies to their forces in America. That advantage when achieved was in great part neutralized by the supplies furnished by colonists to the enemy. The law, as a matter of fact, permitted the export of provisions to French and Spanish colonies in time of peace, but of course forbade it in time of war. But the habit of evading trade laws was too strong for the colonial traders, and when the outbreak of war increased the profits to be gained from the provision trade, many of them ignored the fact that it had also rendered it treasonable. 'When they were asked to desist absolutely from all commercial dealings with their best customers, their good friends the enemy, the sacrifice seemed even too much for their simple loyalty.'<sup>1</sup> In 1750 the English admiral declared that

Colonial  
merchants  
led by  
habit of  
illegal  
trading in  
peace into  
treason-  
able traffic  
with  
enemy in  
time of  
war.

<sup>1</sup> Hall, 'Chatham's Colonial Policy,' *Am. Hist. Rev.* July 1900, p. 666.

CHAP.  
VI

1756-63.

the supplies furnished to France from the English colonies had caused the failure of British operations in the Caribbean Sea. In the Seven Years' War, 'to a large extent, the colonies neutralized the advantages arising from British naval activity, both supplying the French colonies with the sorely needed provisions, and also furnishing a market for their produce.'<sup>1</sup> 'If it were not for these supplies we get from the enemy we should have to live upon what this place can furnish us,' wrote a Frenchman from the West Indies in 1758 in a letter which the British captured at sea. The English colonies were large producers of food for export, but so extensive was this trade with the enemy as to exhaust their surplus supplies; while the French forces were abundantly supplied, those of England were actually in want and had to be furnished by imports from Europe.<sup>2</sup> Provisions were more plentiful and cheaper in the French settlements than in the English West Indies.<sup>3</sup> Families like the Livingstons, who figure amongst the heroes of the Revolution, were engaged in the trade.<sup>4</sup>

Indifference of colonial opinion to the larger interests of the Commonwealth.

The demoralized state of public opinion which made such things possible is best described in the words of Beer himself. 'The trade,' he remarks, 'was carried on so immoderately that it brought considerable wealth to the colonial merchants engaged in it. Burnaby, an English traveller who was in America during the war, reported that New York had "acquired great riches" in this manner. The immoderate extent of this trade was due to the temptations offered by the large profits, together with the absence of a strong imperial sentiment to counteract the promptings of self-interest. As was said at the time, in connection with these practices in Jamaica and in the North American colonies: "Here it is an Island

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 87-8.

<sup>2</sup> *Ibid.* p. 105.

<sup>3</sup> *Ibid.* p. 102.

<sup>4</sup> *Ibid.* p. 111.



Interest, There it is the Interest of the Colonies ; What opposes this Interest is, of all other Things the most obnoxious to them, For the Public or National Interest is out of the Question with both.”

At the outset the continental colonies supported this policy of non-intercourse, as their own immediate interests were concretely involved in repelling the French advance. In 1758 the tide turned, and in the following year, with the fall of Quebec, the power of France on the continent was broken. It is significant that this trade with the enemy reached its high mark in 1760, when France was no longer a source of danger to the continental colonies. In the eyes of the British government, then under the guidance of the great imperialist Pitt, France was the enemy, whether in India, Africa, Germany, North America, or the West Indies. It would seem, that to many in the colonies, France on the continent of America was the preëminent source of danger, but that France in the West Indies was merely an un-failing source of wealth. The marked provincialism of the colonies blinded them to the fact that any support given to France in the Caribbean strengthened her in Canada. What was in its essence a world-wide struggle between Great Britain and France—between two distinct types of civilization—contracted in the narrow vision of the colonies to the dimensions of a local conflict.’<sup>1</sup>

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1759.

Most, but not all, of the assemblies passed laws in restraint of the practice, and in doing so at once placed their own traders at a disadvantage, and rendered the business far more profitable for traders in the colonies which declined to follow suit.<sup>2</sup> Pennsylvania and Rhode Island were conspicuous offenders, and Boston merchants organized them-

Demoral-  
ized state  
of public  
opinion  
on the  
subject of  
trade with  
the enemy.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 130-1.

<sup>2</sup> *Ibid.* pp. 82-3, 90.

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VI

selves to engage in the trade in defiance of the laws enacted by Massachusetts until Rhode Island and Connecticut had placed their own trades under similar restraints.<sup>1</sup> But, again, it was one thing to pass laws and another to find juries in the colonies to enforce them.<sup>2</sup> The failure of the Imperial Government to secure convictions for trading with the enemy, where the offence was clearly proved, shows that it was not merely individual merchants but public opinion which had become demoralized. Even the Admiralty courts were influenced by the laxity of the atmosphere in which they worked.<sup>3</sup> In every commercial state individual traders are to be found who cannot resist the temptation to make large profits by furnishing the public enemy with means for the destruction of their countrymen. But there is something strangely amiss with a community in which public opinion condones such treason. An American trader suspected in 1898 of furnishing supplies to the Spanish fleet would have found short shrift in the streets of Charleston, Boston, or New York. Yet a temporary rebuff to American prestige was the worst that could have happened in the Spanish war. In the Seven Years' War, when every one knew that the existence of the colonies themselves was at stake, there was general indifference to the sordid treachery of furnishing the enemy with supplies. No better example could be cited of the effect on young communities of a system which permits control of domestic interests but denies responsibility for the issues of national life or death.<sup>4</sup>

The commercial system based on a false psychology.

To the colonists the position for which France was fighting in America was a greater menace than to the English themselves. Their material

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 118.

<sup>2</sup> *Ibid.* p. 121.

<sup>3</sup> *Ibid.* p. 126.

<sup>4</sup> See Note G, at end of this chapter, in which Beer's treatment of this important subject may be studied at length, p. 388.

interest in defeating France was at once more immediate and obvious. It supplied exactly the kind of motive upon which the exponents of the commercial system relied as a sufficient link between the colonists and the Commonwealth from which they sprang. But their reading of human nature was wrong from the first, because it was based on commerce, and assumed that commerce was the beginning and end of life. The moment great cracks in the fabric began to appear and widen, those who were concerned for its unity forgot to talk of interests, and the word 'loyalty' was on every man's lips. Suddenly they realized that material interests may bring men together, but nothing can be trusted to keep them together but the devotion which enables them to forget their interests and themselves. To breed such devotion in the men they govern is the ultimate task of statesmen, and it behoves them before all things to know how it is engendered. But the forces which unite men cannot be understood when studied in the market and not in the family, which after all is the primary unit of society. There it is a matter of common observation that parental is stronger than filial responsibility, that one father can oftener support ten sons than ten sons one father. The filial sense is strongest in children who have been called upon early to share the responsibilities of the family life. A sense of responsibility is indeed developed in proportion to the calls which are made upon it. The radical defect of the old colonial system was that from the outset it ignored this side of human nature and placed on the colonists no duty for maintaining the Commonwealth as a whole. That task the parent community reserved to herself, believing that she might depend upon the gratitude of the colonies to sustain their loyalty. The exponents of the commercial system missed the truth that loyalty

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Decline of  
colonial  
loyalty to  
the Com-  
monwealth  
through  
want of  
exercise.

could only be sustained by associating the inhabitants of America with those of Britain in the task of defending their common civilization. To argue that it was not possible to associate them is beside the point. The object of this inquiry is neither to censure nor justify the exponents of the old colonial system, but to see what the system was and to trace the results to which it inevitably led.

That under it the colonists were not associated in the general tasks of the Commonwealth is a fact beyond dispute. The effect of this severance from its common life and responsibilities began to make itself felt from the outset. In Massachusetts, as early as the reign of Charles II., the assembly had claimed that it was 'by the pattent a body politicke, in fact and name,' and as such that it had full power and 'authoritje, both legislative and executive, for the gounment of all the people heere, whither inhabitants or strangers, both concerning ecclesiasticks & in ciuils w<sup>th</sup>out appeale, excepting lawe or lawes repugnant to the lawes of England.'<sup>1</sup> 'Our allegiance,' they said, 'is due to the natural body alone of the King, not to the publick body.' 'The theory of the imperial constitution that ultimately prevailed in the colonies was that they were united to Great Britain solely through the Crown.'<sup>2</sup> In 1764 Stephen Hopkins, the Governor of Rhode Island, 'claimed that "in an imperial state, which consists of many separate governments, each of which hath peculiar privileges, and of which kind it is evident the empire of Great Britain is; no single part, though greater than another part, is by that superiority intituled to make laws for, or to tax such lesser part; but all laws, and all taxations, which bind the whole, must be made by the whole."'<sup>3</sup> But citizenship involves

<sup>1</sup> Mass. Col. Rec. IV. Part II. pp. 24-6.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, p. 310.

<sup>3</sup> *Ibid.* pp. 310-11.

an unlimited devotion which cannot be rendered to two authorities, and Hopkins, like his contemporaries, was evading the inexorable question whether that devotion was due to the whole or the part. An equivocal loyalty clothed itself in the language of equivocation, rendering with the lips to the emblems of one state the service which the heart reserved for another. 'The colonists . . . asserted their loyalty to the mother country. Such assertions are, however, no proof of the existence of this sentiment. As in many other historical movements, the real motive was obscured because its revolutionary character would have injured the cause. The expression by the colonies of a desire for independence would inevitably have put on them the burden of proof, would have united all parties in Great Britain against them, and would have alienated many supporters in America. Hence the colonies to a great extent ignored the underlying cause of their actions, and in all sincerity expressed a loyalty, which in reality they did not feel. For if in loyalty there is implied any idea of sacrifice, then this sentiment was to a marked degree absent in the colonies. Their allegiance was purely utilitarian, and its fundamental basis had disappeared with the conquest of Canada.'<sup>1</sup> The language which Beer here uses is very precise. 'Loyalty,' he says, 'was to a marked degree absent in the colonies.' It was not, however, extinct. When the final crisis was reached, thousands of Americans were found to prefer poverty, exile, and death, rather than become aliens to the British Commonwealth. Their number was yet too small to turn the balance. The material was there no less than in Britain itself, but it had been left 'unexercised and unbreathed' by responsibility, and was therefore too little developed to turn the scale.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 308-9.

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Impracticable theories of government in the colonies arising from want of contact with facts.

Strictly colonial character of patriotism developed by American colonists.

Stephen Hopkins 'illustrated his conception of the British Empire by comparing it to the decentralised German system.'<sup>1</sup> The comparison was a just one, for the claims advanced by the colonial assemblies were exactly on a par with those advanced by the German princes, and in either case the result was imperial impotence. But in America the system had bred a race of publicists whose doctrines were untempered by contact with real political facts. The excellence of the principle that all should assent to measures affecting all seemed incontestable. But what was to happen when universal consent was not forthcoming was a question which the leaders of colonial opinion simply neglected to face.

The failure of the colonies to assume their share in the general defence of the Empire was not more striking than their incapacity to effect, by joint action, measures required for their own peace, order, and good government. In the letters published in 1777 purporting to have been written by Montcalm it is remarked that the colonists 'in general care nothing for the King or Parliament of England. If fear of France had not acted as a rein to keep them in check, they would long ago have cast off their yoke, and *each province would have become a little Republic*.'<sup>2</sup> Clearly, there was nothing to suggest to the author of these letters any tendency on the part of the colonists to create an American republic. The only devotion he observed was that of the colonists to their several colonies. The one loyalty which flourished under the system was that evoked by the local communities for which Americans were really responsible. The only Government they were ready to obey was also the only Government which could tax them with effect.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 311.

<sup>2</sup> *Ibid.* note, pp. 172-3.

The difficulties which led to the final catastrophe did not arise from the incapacity of the colonial assemblies to handle Imperial problems, for this they were never called upon by Great Britain to do. Those difficulties arose from their incapacity to handle the domestic affairs of British America. The point, which is of supreme importance, can be rendered clear by a simple analogy. In 1867 Canadians created the Dominion Government, in 1900 Australians created the Commonwealth Government, and in 1909 South Africans created the Union Government. These Governments were created to meet Canadian, Australian, and South African needs which experience had proved that the existing provincial or colonial governments were incapable of meeting. Had they failed to erect these Governments, some action would have been necessary to meet the most pressing of these needs, which, though domestic, concerned more than one colony, and would if neglected have led to positive disaster. Such action could only have been taken, and in South Africa until 1909 was frequently taken, by the British Government.<sup>1</sup> Now let it be supposed that the British Government, having applied in vain to the assemblies representing the provinces of Canada, and the various colonies in Australia and South Africa, for a contribution towards the cost of the service rendered, had endeavoured by an Act of the Imperial Parliament to levy that contribution direct from the colonists, it would have reproduced exactly the situation which led to the American Revolution.

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VI

American  
interests  
as dis-  
tinguished  
(a) from  
Imperial  
interests,  
(b) from  
colonial  
interests,  
the real  
subject of  
dispute.

<sup>1</sup> The use of Imperial troops to quell riots on the Witwatersrand is a recent instance due to the fact that the South African Union has not yet had time to organize its own forces for the maintenance of internal order. The Union Government, however, can be called upon to meet any special charges incurred. The Imperial Government has not to recover these charges from the four colonial governments which existed before the Union, and which would have been certain to dispute the basis of apportionment. That was the position which the Imperial Government had in 1764 to face in America.

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For the purpose of this inquiry it cannot be realized too clearly that in the British Commonwealth of to-day the particular difficulty which led to the crisis in America has been dealt with by the series of constructive operations of which the Union of South Africa was the last. The issue is complicated by the fact that, while the costly function of defence has both a local and a general aspect, the two constantly overlap. Unlike the United States and Germany the British Commonwealth has never been so organized as to command the whole of its resources for the general defence. For that supreme purpose the Imperial Government, such as it is, can levy no taxes except from the people of the British Isles. When, for instance, in 1895 the Government of the United States used language which could only be interpreted as a claim to control the destinies of Canada, the British Government repudiated that claim, but in language so temperate that a conflict was happily avoided.<sup>1</sup> Had the United States persisted in the claim that Canada was subject to the sovereignty of the United States, a war in defence of the integrity of the British Empire would have been the inevitable issue. In defence of that cause the Imperial Government would have been able to command the whole resources of the British Isles. But it was not competent to command those of the Australian, New Zealand, and South African colonies, nor even those of Canada itself, the Dominion most directly concerned. To turn from supposition to fact, this was the position actually realized when the South African Republics issued an ultimatum and invaded Cape Colony and Natal. To this extent the British resembles the Holy Roman Empire. The feature distinguishing the two Empires is the existence in the British

<sup>1</sup> See Note.H at end of this chapter, p. 414.



Empire of one community which up to the present has proved itself able and willing to secure the integrity of the whole, and to meet the cost of doing so from its own resources. And this so far it has accomplished by providing Imperial fleets and armies which can be moved to any part of the globe for the purpose of destroying forces which may anywhere threaten to violate the Commonwealth. The fact that India and the Dominions of Australia, New Zealand, South Africa, and Canada are still parts of the British Commonwealth was determined by battles fought at sea off the coasts of Spain and Egypt and by land on Spanish and Belgian territory. 'America,' as Chatham declared, 'was conquered in Germany.'<sup>1</sup> It is essential to an understanding of the issues which led to the American Revolution to realize that no attempt was made by the British Government to tax the American colonists in order to meet charges of this class. To Imperial defence, as distinguished from the defence of America, they were never asked to contribute.

The conditions which led to the quarrel will be clearer if it be imagined that the United States of America had in 1895 pressed the interpretation of the Monroe doctrine there advanced by Mr. Olney to the point of war. The theatre of war would certainly have been Canada, but in Canada there would have been at Ottawa one Government competent to evoke the whole manhood and wealth of British North America in aid of its defence; and there is not the smallest reason to suppose that it would have failed in its responsibility. It is not at all unlikely that, had the English-speaking world been engaged in this internecine conflict, France and Russia might have seized the opportunity of challenging British supremacy at sea, with a view to realizing

The distinction of Imperial from Dominion interests further elucidated.

<sup>1</sup> Chatham, *Speeches*, vol. i. pp. 358-9.

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their respective ambitions in Egypt and Asia. The British Commonwealth would then, as in the Seven Years' War, have been fighting for its life, and its ultimate success in resisting the claims of the United States of America would have depended, as in the eighteenth century, on the adequacy of its equipment for general defence—on its power to keep control of the sea.

The American colonists never asked by Britain to contribute to charges which were purely Imperial.

To the cost of this general equipment the American colonists were never asked to contribute. The Stamp Act and tea duties were imposed in order to meet in part charges the whole of which the Dominion, Commonwealth, or Union Governments would now assume as a matter of course. Whatever the pretensions of the American assemblies may have been, they were from the character and situation of the communities they represented unequal to the functions of a modern Dominion Government. Experience proved them to be suited only for such business as now falls within the scope of the provincial governments of New Brunswick, Queensland, or Natal.

Incapacity of the colonial assemblies to settle their own boundary disputes.

To begin with, after the manner of local bodies, they were for ever quarrelling amongst themselves. Britain had really no concern in these quarrels. The interests involved in them were entirely American. But the Americans were powerless to settle them for themselves, and the British Government, as in South Africa a century later, was constantly driven to intervene to prevent them from breaking each other's heads. 'It is characteristic of the particularistic spirit prevailing in the colonies that in 1755, at a time when their very existence was threatened by the French, Massachusetts and New York engaged in a bitter boundary controversy leading to riot and bloodshed. This episode called forth a caustic rebuke from the Lords of Trade, who wrote to

Shirley: "It is very much to be lamented, that the internal peace of Government should be disturbed by trivial Disputes of this kind, at a time when the Colonys are so loudly called upon to exert with the greatest unanimity their utmost Strength in their own defence, and in vindication of His Majesty's Right."'<sup>1</sup>

Boundaries belong to that class of political problems which can be settled once for all. There are others, involving the adjustment of relations between two sets of human beings, which ought not to be called problems, because they admit of no final solution. The basic question arising out of the relation of the settlers to the Indians was a case in point. In questions of this order conditions must be dealt with as they arise, but cannot be handled with any prospect of success without reference to certain continuous principles. Those who have seen an European society established in another continent side by side with its native society can best realize the imperative necessity of control over the relations of individual Europeans to individual natives. The success of such control will depend upon the steady application of a continuous policy to the whole area of contact between the two races. The extent of its failure will be marked by injuries to both. As to the incompetence of the colonial assemblies to grapple with this question the leading American and British historians agree. 'Until the middle of the eighteenth century, the British government had left the management of Indian affairs to the separate colonies. From their very foundation, the commercial relations with the aborigines had been important. With the development of Canada, the bulk of this trade had, however, drifted into French hands, yet at all times it constituted a not insignificant feature of the economic life of the

Incapacity  
of the  
local  
assemblies  
to handle  
the Indian  
question.  
Its  
essentially  
American  
character.

1753.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 49-50.

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British colonies. The success of the French was due in great measure to the centralised form of their government, and similarly the failure of the English resulted from the fact that each colony sought to secure as great a share of the Indian trade as was possible, and thwarted the endeavors of its competitors. The result of this rivalry had been pernicious, not only in facilitating the success of the French in the fur trade, but also in alienating the Indians. . . .

‘This dissatisfaction of the Indians was due to many causes: to French incitement; to the intrusion of English settlers on their lands; to the abandonment by the English of the French policy of giving to the natives presents of guns and clothing; and, above all, to the low moral character of the English traders. In 1761, the secretary of state, Egremont, wrote to Amherst, condemning in strong terms the shameful conduct of the colonial traders in taking advantage of the Indians, and pointing out that the French, by pursuing a different course, had deservedly succeeded in gaining the confidence of the native tribes.’\*<sup>1</sup> The earlier researches of Lecky had led him to very similar conclusions. ‘The relations of the colonists to the Indian tribes were scarcely less demoralising. White men planted among savages and removed from the control of European opinion seldom fail to contract the worst vices of tyrants. The voluminous and very copious despatches of Sir W. Johnson and of Mr. Stuart, who during many years had the

\* Dec. 12, 1761. Am. and W.I. 77. On April 28, 1761, Francis Bernard wrote to the Board of Trade that the Indians “are suffered to run in debt beyond their abilities & then are allowed to sell their children to pay their debts; they are suffered to harass one another at Law for trivial disputes, which sometimes end in the ruin of both parties; when they are condemned in criminal prosecutions, they are subjected to Fines instead of corporal punishment, so that where the Criminal only ought to be corrected, his family is ruined; In civil actions, they are charged with exorbitant costs, when it is known they have nothing to pay with.” B. T. Mass., 78 Ll. 14.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 253, 255-6.

management of Indian affairs, are, on the whole, extremely creditable to the writers. They show that the Government laboured with great humanity, equity, and vigilance to protect the rights of the Indians, but they also show that they had to encounter insuperable difficulties in their task. The Executive was miserably weak. There were usually no troops within reach. Juries in Indian cases could never be trusted, and public opinion on the frontier looked upon Indians as little better than wild beasts. The French had in this respect succeeded much better. The strong Executive of Canada guarded the Indians effectually from depredations, restricted commercial dealings with them to the better class of traders, and attached them by a warm feeling of gratitude. But the despatches of Johnson and Stuart are full of accounts of how the English settlers continually encroached on the territory which was allotted by treaty to the Indians; how the rules that had been established for the regulation of the Indian trade were systematically violated; how traders of the lowest kind went among the savages, keeping them in a state of continual drunkenness till they had induced them to surrender their land; how the goods that were sold to Indians were of the most fraudulent description; how many traders deliberately excited outrages against their rivals; how great numbers of Indians who were perfectly peaceful, and loyal to the English, were murdered without a shadow of provocation; and how these crimes were perpetrated without punishment and almost without blame.

‘A few voices were no doubt raised in the colonies on their behalf. Franklin wrote with honest indignation denouncing some horrible murders that had been perpetrated in Pennsylvania. The Quakers were usually noted for their righteous dealing with the Indians. . . . It is a significant fact that in the

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French war the Indians were usually on the side of the French, and in the War of Independence on the side of the Government, and the explanation is probably chiefly to be found in the constant and atrocious outrages which they endured from the American traders.’<sup>1</sup>

Need for  
a uniform  
Indian  
policy  
grasped  
by the  
British  
Govern-  
ment.  
Colonial  
conference  
summoned  
at Albany  
in 1753,  
proposes a  
scheme for  
a colonial  
union.

The imperative need of some authority in a sphere which was neither Imperial nor colonial but American, was recognized much less clearly by colonial politicians than by British officials. The truth was that the British Government felt, what the colonial assemblies never felt, that the final responsibility rested upon them. It is only by handling the facts that men learn to understand them. In 1753, when the British and French in America were fast drifting into war, the British Government realized that the incapacity of the colonial assemblies to handle Indian affairs was about to yield a terrible harvest. The coherent policy of the centralized French Government had succeeded in attracting the more powerful tribes to its cause, and the British colonies were threatened with all the horrors of an Indian invasion. Not one but many colonial frontiers were menaced, and the folly of attempting to handle the tribes through a number of assemblies was obvious enough. The British Government therefore convoked a meeting of representatives from the colonies immediately threatened, to negotiate with the Indians. If possible, the instruction ran, all the colonies were to be ‘comprized in one general Treaty to be made in his Majesty’s name.’<sup>2</sup> The Congress which assembled at Albany resolved unani-

1754.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 36-8.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, p. 17.

and appointed a committee to prepare a plan. The document which embodied their reasons reveals the impotence of the colonists to handle their own interests under the existing system. ““The commissioners from a number of the northern colonies, being met at Albany, and considering the difficulties that have always attended the most necessary general measures for the common defence, or for the annoyance of the enemy, when they were to be carried through the several particular Assemblies of all the colonies; some Assemblies being before at variance with their governors or councils, and the several branches of the government not on terms of doing business with each other; others taking the opportunity, when their concurrence is wanted, to push for favourite laws, powers or points, that they think could not at other times be obtained, and so creating disputes and quarrels; one Assembly waiting to see what another will do, being afraid of doing more than its share, or desirous of doing less, or refusing to do anything because its country is not at present so much exposed as others, or because another will reap more immediate advantage; from one or other of which causes, the Assemblies of six out of seven colonies applied to, had granted no assistance to Virginia, when lately invaded by the French, though purposely convened, and the importance of the occasion earnestly urged upon them;—considering moreover, that one principal encouragement to the French, in invading and insulting the British American dominions, was their knowledge of our disunited state, and of our weakness arising from such want of union,” . . . for these reasons the commissioners unanimously decided that “a union of the colonies is absolutely necessary for their preservation.” These difficulties had existed throughout the entire history of the colonies, but at no previous time was the situation so critical.

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‘The committee appointed by the colonial commissioners accordingly drafted a plan of union, and this plan, chiefly the work of Franklin, was in due course unanimously adopted. It provided for an executive and a legislature; the former—the president-general—to be appointed and supported by the Crown, the latter—the Grand Council—to be elected by the various assemblies in the eleven colonies. This legislature was to consist of forty-eight members, the colonies being represented roughly according to population and wealth. To this Grand Council was given jurisdiction over Indian affairs, both political and commercial. It was to raise and pay soldiers, to build forts for the defence of the colonies, and to “Equip Vessels of Force to Guard the Coasts and protect the Trade on the Ocean, Lakes, or Great Rivers.” In order to raise the requisite funds for these purposes, the Grand Council was given power to make laws and to impose general duties and taxes. All acts of the Grand Council, however, required the consent of the president-general, and, in addition, all laws were to be submitted to the king in council for approbation. This plan, it is apparent, implied an assumption by the colonies of a far greater share of the cost of defence than had hitherto been customary.

The  
Albany  
proposals  
ignored by  
the  
colonial  
assemblies.

‘This proposal for a political union of the colonies under one general government in America was ultimately to be brought into effect by an act of the Parliament of Great Britain. With the exception of those from Massachusetts, the colonial commissioners did not, however, have full powers, and accordingly it was provided that the plan should be first submitted to the colonies. With the same unanimity with which their representatives had adopted the plan, the colonial assemblies either rejected or failed to ratify it. The reasons for this failure were, on the one hand, the particularism of the colonies, and on



the other, their underlying conviction that Great Britain, if left no other choice, would ultimately have to assume the task of defending them. According to Shirley, the commissioners at Albany "had no expectation" that the colonies would adopt the plan; and he added, "nor could any proper plan be form'd, as I apprehend, in w<sup>ch</sup> the several Gov<sup>ts</sup> would unite." Franklin was not more sanguine. On December 29, 1754, he wrote to Collinson: "All the Assemblies in the Colonies have, I suppose, had the Union Plan laid before them, but it is not likely, in my Opinion, that any of them will act upon it so as to agree to it, or to propose any Amendments to it. Every Body cries, a Union is absolutely necessary, but when they come to the Manner and Form of the Union, their weak Noddles are perfectly distracted."<sup>1</sup>

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Franklin strongly advocated that the union should be brought into existence by an Act of the Imperial Parliament. 'Till it is done,' he wrote in 1755, 'never expect to see an American War carried on as it ought to be, nor Indian Affairs properly managed.'<sup>2</sup> It was the governors, whose office was the link between Imperial authority and colonial autonomy, who realized most keenly the dangers of the system.

Interven-  
tion of the  
British  
Parlia-  
ment  
desired by  
Franklin  
and others  
in America

'At the very time that the colonial commissioners were sitting at Albany, the clear-sighted lieutenant-governor of Virginia, Robert Dinwiddie, in a forcible despatch to the secretary of state, bitterly commented on the particularism of the separate colonies and on their lack of a spirit of coöperation. "Now what, Sir, [he wrote] must be the result of this? Virginia alone is not able to support the whole Burthen; & if some Method is not found to take away these destructive Denials of Assistance from the other Colonies, when it is judged proper to be demanded by his Majesty for the common Good, as now; The

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 19-22.

<sup>2</sup> *Ibid.* p. 29.

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Consequence must be, the present Loss of one of the finest & most fertile Countries in America; & the future destruction of all the British Dominions on this Continent." . . . Two months later, Dinwiddie once more wrote to Robinson, on the great uncertainty of obtaining the necessary support from the Virginia Assembly, as Maryland and Pennsylvania had been so "monstrously backward," and adding, "but really, without a British Act of Parliament to oblige all the Colonies to a mutual Supply, I dread the Governours will hardly be able to perswade them."<sup>1</sup> Similar experience was driving Shirley, the governor of Massachusetts, to similar opinions.

'The Pennsylvania legislature, after "an absurd obstinate Dispute w<sup>th</sup> Gov<sup>r</sup> Morris ab<sup>t</sup> Instructions have adjourned themselves, whilst the Enemy is at their Doors, to the beginning of May, without doing anything for the preservation of their Country." The Maryland Assembly has likewise "risen" without doing anything further than providing for "a Company of fifty men, w<sup>ch</sup> was done before." South Carolina was not active in the common cause, and Virginia was not doing as much as she should. "This behaviour [Shirley concluded] seems to shew the necessity not only of a parliamentary Union but Taxation for the preservation of his Majestys Dominions upon this Continent, w<sup>ch</sup> the several Assemblies have, in so great a measure abandon'd the Defence of, and thereby layd his Majestys Governm<sup>t</sup> at home under a necessity of taking care of it for the State by suitable assessm<sup>ts</sup> upon the Colonies."<sup>2</sup>

Particularism of colonies as attested by a foreign observer.

Their experience in the last French war had taught the British ministers what to expect from the co-operation of the colonial assemblies. Independent testimony on this subject has been left in

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 43, 44-5.

<sup>2</sup> *Ibid.* p. 47.

the writings of Kalm, a Swede, who visited the colonies immediately after the war of the Austrian Succession. 'It has commonly happened,' he wrote, 'that while some provinces have been suffering from their enemies, the neighbouring ones were quiet and inactive and as if it did not in the least concern them. They have frequently taken up two or three years in considering whether they should give assistance to an oppressed sister colony, and sometimes they have expressly declared themselves against it.'<sup>1</sup>

In 1755 the rapid encroachments of the French and Indians were bringing matters to a crisis, and to save the situation the Ministry resolved to provide four regiments at the expense of the British taxpayer. Braddock was sent to take command, and William Johnson was appointed to the charge of Indian affairs. The failure of the Southern colonies, including Pennsylvania, to support Braddock, largely contributed to his downfall in 1755.<sup>2</sup> Next year the formal declaration of war found the American colonies no more united and in no better position to conduct their own defence. The British Government now fell back on the expedient of making grants to the colonial assemblies in proportion to the work they had actually done. Pitt, who realized that the future of the British Commonwealth hung upon the issue of this war, saw that so long as it lasted everything should be sacrificed to the one object of beating the French. In England it was far less difficult to raise money than to raise soldiers and transport them to America. He persuaded Parliament therefore to spend some £200,000 a year in payment to the American colonies for their services in defending their own territory from the French, and about two-

The Imperial Government forced to take action at the expense of the British taxpayer. Colonial troops largely paid from British revenues.

1756.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv., note on pp. 10-11.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, p. 44.

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fifths of the expenditure incurred by the colonies was thus reimbursed by the British Parliament. In this way Pitt succeeded in bringing into the field a considerable body of colonial troops. Of these seven-tenths were furnished by Massachusetts, Connecticut, and New York, which together contained one-third of the colonists. The other two-thirds sustained a burden less than one-fourth of that assumed by the more public-spirited communities.

Results  
of this  
experience  
as reviewed  
by Beer.

The general result is thus stated by Beer. 'It is apparent that a system which allowed a colony to evade in whole or in part the performance of its obligations as a part of the Empire was inherently vicious. Each colony was intent on seeing what the others were doing, and the action of the least zealous tended to become the standard by which the others regulated themselves. The system was an unfair one. It threw a relatively larger share of the burden on public-spirited colonies, whose activity was thus penalized, while at the same time a premium was placed on neglect of duty. It diminished the potential military strength of the colonies during the greatest crisis of their existence, forcing the mother country to make up, in part at least, the deficiency thus created. It also limited the extent of the operations themselves; for, had more troops been available, it is probable that Louisiana would have been conquered. From a military standpoint as well, the system was deficient. The successive commanders-in-chief wasted much time and energy in obtaining the colonial levies. In order to secure the needed support, they were repeatedly forced to interfere in the internal politics of the colonies, especially in Pennsylvania. Disputes as to the conditions and duration of service were frequent. It was never exactly known how many troops the colonies would provide, and occasionally their tardiness in arriving for service unduly delayed

an expedition. In all these different ways were military operations hampered, and the strength and efficiency of the army impaired. Thus, the experiences of the war served but to reënforce the conclusion reached by many already in 1755, that the defence of the colonies in time of peace could not with safety be left to them because of their lack of union, and also that they could not be relied upon as a whole to provide voluntarily for their due proportion of the necessary military establishment.’<sup>1</sup>

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During the war Johnson had found that as an Imperial officer he was powerless to control the colonial traders in their relations with the Indians. Laws regulating this trade involved the action of a dozen legislatures, and the conclusion was forced on the British Government: ‘That our Interest with respect to the Indians never can be settled with stability, but by the interposition of the Parliament of Great Britain, in making some general Regulations for the management of Indian Affairs, upon some general Plan, under the sole direction of the Crown & its Officers.’<sup>2</sup>

Ministers forced to the conclusion that the legislative authority of the British Parliament must be evoked for the proper regulation of Indian affairs.

This was in 1762. The Peace of Paris was signed early next year, but the ink was scarcely dry before the frontiers of Pennsylvania and Virginia were devastated by an Indian rising of unparalleled ferocity and magnitude under Pontiac, an Indian with genius for organization. ‘A confederation including several Indian tribes had suddenly and unexpectedly swept over the whole western frontier of Pennsylvania and Virginia, had murdered almost all the English settlers who were scattered beyond the mountains, had surprised and captured every British fort between the Ohio and Lake Erie, and had closely blockaded Fort

Indian rising under Pontiac in 1763.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 70-1.

<sup>2</sup> Board of Trade to Thomas Boone, June 3, 1762. B. T. So. Ca. 29, p. 171, quoted by Beer, *British Colonial Policy, 1754-1765*, p. 256.

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Detroit and Pittsburg. In no previous war had the Indians shown such skill, tenacity, and concert; and had there not been British troops in the country, the whole of Pennsylvania, Virginia, and Maryland would probably have been overrun. In spite of every effort, a long line of country twenty miles in breadth was completely desolated, and presented one hideous scene of plunder, massacre, and torture. It was only after much desperate fighting, after some losses, and several reverses, that the troops of Amherst succeeded in repelling the invaders and securing the three great fortresses of Niagara, Detroit, and Pittsburg.<sup>1</sup>

The colonial assemblies having failed once more to respond to requisitions for men or money the British Government was driven to suppress the rising and to maintain permanent forces in America after peace was made.

Amherst was instructed by the British Government to call upon the colonies for assistance. But the Ministry did not dare to ask the people of Great Britain, groaning as they were under the burden of taxation imposed by the recent war, to vote further grants as an inducement to colonial assemblies to protect their own frontiers from native attacks, which were in fact provoked by the failure of those very assemblies in the management of Indian affairs. Accordingly, Amherst was warned that he must not offer the slightest hope to the assemblies that the English Treasury would pay for the troops they furnished. Again, Beer may be called upon to relate what followed. 'As the situation was a most serious one, Amherst asked New York, New Jersey, Pennsylvania, and Virginia to furnish some troops, but he refrained from calling on the New England colonies. This led to a number of difficulties. The New York Assembly thought it unreasonable that all the colonies had not been asked, and agreed to contribute their quota only if the New England colonies did likewise. New Jersey followed the example of New York. On account of the lack of response to the requisitions,

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 57-8.

Gage, who towards the end of 1763 succeeded Amherst as commander-in-chief, also asked the New England colonies for aid. Massachusetts refused to respond to his request, not being willing to submit to any dictation from New York. The New Hampshire Assembly, on the ground that neither Connecticut nor Massachusetts had complied, likewise refused, alleging also that they could not support the charge of the two hundred men requested by Gage "at so great a Distance as Niagara." Similarly, Rhode Island would not raise the troops demanded by the Commander-in-Chief. Some of these difficulties were overcome. Thus Connecticut finally agreed to levy a small body of soldiers. But in Pennsylvania, the old dispute between the proprietors and the legislature interfered with the grant of effective support. Virginia, however, had responded energetically to Amherst's requisition. New York ultimately raised somewhat over one-half of the number of troops desired, whereupon New Jersey agreed to provide three hundred instead of the six hundred that Amherst had requested.

'The general attitude of the colonies is comprehensively described by the governor of New Jersey in a despatch in which he discussed the difficulty of raising troops in the colonies. On March 6, 1764, William Franklin wrote to the Board of Trade: "The Want of Union among the Colonies must ever occasion Delay in their military Operations. The first that happens to be called upon postpones coming to any Determination till 'tis known what the other Colonies will do; and each of those others think they have an equal Right to act in the same Manner. This procrastinating Conduct, owing to the Jealousies and Apprehensions each Colony has lest it should happen to contribute Somewhat more than its Share, is the Reason why the American Levies are sometimes

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delay'd till the Season for Action is nearly elapsed." In view of these facts, the following words of Halifax seem somewhat mild. On May 12, 1764, he wrote to Colden: "It were much to be wished that the several Colonies whose assistance was required had cheerfully exerted themselves to raise the full numbers of Men demanded of them by His Ma<sup>ty's</sup> Commander-in-Chief."

'Thus it was again demonstrated that the requisition system was absolutely unworkable. Its inefficacy rendered the establishment of a standing army in America essential. In fact, the failure of the colonies to respond to the requisitions in 1764 forced both Amherst and Gage to disobey their instructions to reduce the regular force in America. The British government was left no choice, and was forced to keep a large force on the continent.

'This measure was a direct result of existing military conditions. As, however, it was generally recognized in England that there was in the continental colonies a marked tendency toward independence, the fact that such a standing army would serve as a counteracting agency was not totally ignored. At most, however, if at all a motive of this measure, it was a distinctly subordinate one. Until the revolutionary movement was well under way, several years after the adoption of this policy, but very slight, if any, stress was laid on the American army as a weapon of coercion.'<sup>1</sup>

Question  
as to the  
sources  
from  
which  
the cost  
of these  
forces in  
America  
was to be  
met. The

The cost of the force necessary was estimated at £220,000 over and above the amounts voted by Parliament to support American garrisons before the war. 'The difficulty in securing adequate support from the colonies during the war with France, and subsequently thereto during the Pontiac conspiracy, convinced the British government that parliamentary taxation was

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 263-6.



the sole and only means of obtaining from the colonies their just share of the cost of their own defence. Thus on March 10, 1764, Calvert wrote to Governor Sharpe of Maryland that he had predicted that colonial taxation would be inevitable on the return of peace because of "the colonies remiss<sup>es</sup> of Duty to the Crown & themselves in defence g<sup>t</sup> the Enemy the French, who neither at the commence nor during the War in America were our equals, either in Strength or Circumstances, our Colonies Superiour in all, & with a Little Assistance our People of the Colonies might have subdued the French." But an army had to be sent from England which gained the victories which resulted in the peace of 1763. Since then, a "War has broke out upon the Colonies by the Savages, the colonies neglect by their provincial Legislatures not raising subsidies to avert, nor in defence, stand still & see their Neighbours cruly Butchered by the Savages, squabbling ab<sup>t</sup> framing Assessm<sup>t</sup> Bills to pass, tho' in Defense bound to his Majesty & themselves, send to the mother country for money aid & assistance of Troops."

'In consequence of the patent fact that the colonies, as a whole, would not voluntarily contribute their share of the military burden, it was decided to tax them for this purpose. This decision was the logical result of events from the year 1754 on. The British government might again have tried to form a union of the colonies as it had done in 1754; but the colonies had shown such an aversion to the scheme that any such attempt was inevitably doomed to failure. On the other hand, the mother country might have borne the whole burden of defence, even though this would have violated the prevailing theory and custom. Such a step was, however, decidedly inadvisable, not only because it might be the entering wedge for still larger future increases in the colonial

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dilemma  
which it  
imposed on  
the British  
Govern-  
ment.

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budget, but also because of the existing strain on British finances. The war had about doubled the debt, which stood at the exceedingly large figure of one hundred and thirty million pounds, with an annual interest charge of four and one half million pounds. In addition, Great Britain was spending large sums on the navy, which was regarded as the Empire's main bulwark. Even after the conclusion of peace, Parliament granted annually one and a half million pounds for this purpose. Consequently, British financial resources were severely strained, and the already overburdened taxpayer in the mother country was in no humor to undertake more than his fair share of the expense of defending the colonies. In the eyes of the colonies, the imposition of a parliamentary tax on America would, however, violate the principle of "no taxation without representation." This principle they regarded as the basis of civil and political liberty; and even if its violation could be justified in their eyes, it meant that the colonies were to contribute funds toward the support of an army over whose actions they would have no control. The adoption of either alternative of this dilemma was bound to lead the British government into serious difficulties. But some decision was imperative, for a policy of inaction would have been suicidal.<sup>1</sup>

Necessity  
for an  
organic  
connection  
of execu-  
tive with  
legislature.

The gist of the whole matter was that the Seven Years' War had forced into prominence problems which, though strictly American, were yet too large for any of the autonomous colonies of America to handle. The Indian question alone occupied a field too wide for any executive which the colonists controlled. The British Government attempted to fill the rôle of an American executive, and to provide such uniformity in the administration of native affairs as was necessary to prevent constant blood-

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 269-73.

shed. At once, however, their officers were brought up by the fact that sooner or later administration involves the enactment of a law to administer. They were also brought up by the fact that administration involves expenditure and expenditure involves the raising of revenue. To enact laws or vote revenue were both functions which lay beyond the scope of an executive. Where the supremacy of law has once been established, an executive without a legislature is as much a creature of fancy as those winged heads that adorn the canvasses of Raphael and Murillo, though publicists of that date were not the last to talk as though political wonders could be worked by the magic of executives suspended in the air. In fact, nothing effective could be done in the interests of America as a whole without reference to a legislature. The subsequent experience of the American colonies themselves was to prove the impotence of an executive which depended on a number of legislatures, even where that executive was their own joint creation. A head cannot exist without a body; but neither can it exist with more than one. Executive and legislature are but organic parts of one being, Government, and Government begins to lose its vitality as soon as the arteries which connect those parts are cut.

The British Ministry and its officers thus found themselves paralysed for lack of the powers and revenue which could be derived only from a single legislature, and instead of addressing themselves to the constructive task of creating an appropriate legislature, sought what they needed from the already existing legislature of Great Britain. This meant that the law governing Americans in strictly American affairs was in future to be made by an assembly in which not a single American was represented. Provincial affairs, those transacted by the

Vital defect in the solution attempted by the British Government.

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States at the present day, would have remained in the hands of the colonial assemblies. But in its main outlines the fabric of American society would have been shaped not by American, but by British experience. Worse still, the sense of responsibility of Americans would have gone 'unexercised and unbreathed' in all American affairs but those which were the most subordinate and local. Content to concern themselves with questions of detail only, they would have become a people incapable of self-government, and therefore unfit to share not only in the task of governing America as a whole but in that greatest of all human responsibilities, which the march of events was fast placing on the shoulders of the British Commonwealth. No group of communities unexercised in the real work of self-government would have been fit to grapple with its titanic task of making and keeping the relations of all the levels of human society amenable to law. The peoples of England, Wales, Scotland, and Ireland were not fit for the government of India until they had acquired control of their own relations to each other, until the inhabitants of that indivisible unit, the British Isles, were masters of their own fate. The people of Canada would not be fit to join in the task of Indian government, unless they had first achieved control of Canadian affairs. And the same is true of Australia, New Zealand, and South Africa. The day when the needs of mankind could be satisfied by states limited by uniformity of race, language, or contiguity of territory had already reached its zenith. Henceforward the greatest need was for a state wide enough to include all levels of civilization, and portions, therefore, of every continent, the precursor of that state, still in the remote future, which shall embrace them all. But the primary condition of such a state was and is a supreme Government

with all its faculties reserved for supreme affairs. It can only be realized by the fullest possible development of local self-government. Every community in such a state capable of self-government must be so constituted as to be able to govern itself. Wherever the Imperial problem (using that word in its accurate significance) is met, it may invariably be traced to some failure to separate local from Imperial issues.

The commercial system had only permitted the growth of governments competent to manage the affairs of American localities, and had failed to create any government competent to deal with the affairs of America. £320,000<sup>1</sup> was now needed on the morrow of a great war for the primary function of creating peace and order in America. All other means having failed, the British Government assumed the task, and prepared for submission to the British Parliament measures calculated to raise from America and the West Indies an amount less than a half of the sum required.

Of these the first was a sugar Bill passed by Parliament in 1764 which, by various alterations in the existing customs system, was estimated to produce about £45,000 a year. When introducing it Grenville announced the intention of the Ministry to prepare in the following year a measure requiring all legal documents to be written on paper bearing stamps purchased from the British Government. Newspapers and broadsides were also to bear the stamps. A year's notice was given of the proposal in order that the colonial assemblies might, if they saw fit, render it unnecessary by raising the contribution for themselves. The agents of the various colonies went in a body to see Grenville, who disclaimed any intention of asking the colonies to contribute to the debt incurred on account of the recent war. The revenue

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Legislative authority of a Parliament exclusively representing the people of Britain applied by ministers to the solution of problems exclusively affecting the people of America.

1764.

Grenville's measures for levying a contribution from the American colonists. His invitation to the colonial assemblies to suggest some alternative.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 267.

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Failure  
of the  
colonial  
assemblies  
to suggest  
an alter-  
native,  
because,  
without  
some  
change  
in the  
political  
structure,  
there was  
none.

was required for expenditure necessary in the future only, and in America only. He could not ask the British taxpayer to bear the whole of this future American expenditure, and it was his duty to see that Americans contributed at least some part of it. "I am not, however," he continued, "set upon this tax. If the Americans dislike it, and prefer any other method of raising the money themselves, I shall be content. Write therefore to your several colonies, and if they choose any other mode I shall be satisfied, provided the money be but raised." <sup>1</sup>

In plain words, while stipulating that American taxpayers must at least contribute to the expenses of American administration, he invited the colonial assemblies through their own accredited agents to discuss with him the manner in which it should be raised. In the following February, when sufficient time had elapsed for the agents to transmit their reports and receive further instructions from their principals, they met Grenville again, but confined themselves to arguing against the introduction of the measure. Grenville replied, "I have really been made to believe that, considering the whole circumstances of the mother country and the colonies, the latter can and ought to pay something to the public cause. I know of no better way, than that now pursuing, to lay such a tax. If you can tell of a better, I will adopt it." Benjamin Franklin, who had shortly before come over as Agent for Philadelphia, presented the resolution of the Assembly of his province, and urged that the demand for money should be made in the old constitutional way to the Assembly of each province in the form of a requisition by the governor. "Can you agree," rejoined Grenville, "on the proportions each colony should raise?" The question touched the heart of the difficulty; the

1765.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 69.

agents were obliged to answer in the negative, and the interview speedily closed.’<sup>1</sup> Experience before and after has proved conclusively that it was impossible that they should agree. The particular problem with which Grenville was wrestling was one which could never reach its final solution until there was brought into existence an American Government which could undertake not a part but the whole of the expenditure required for American administrative needs. Such a Government would not have been called upon to attempt the impossible task of year by year agreeing, whether with local American assemblies or with the British Government, as to the proportion of revenue required. The mistake lay not merely in seeking too much but also in seeking too little. Imagine, for instance, what would happen if once the principle were now admitted that the cost of the Dominion Governments was to rest in part on the British taxpayer. Suppose that Dominion Treasuries were entitled as a matter of custom to rely in part on grants from the British Treasury, the annual dispute as to the proportions of the expenditure to be allocated to the British and Dominion taxpayers respectively would simply operate to poison the minds of the two communities against each other. Such grants could not be based on any fixed principle of justice, and could, therefore, only be settled temporarily as the result of hard bargaining from which both parties would retire with a sense of mutual injury.

There is no indication that British statesmen ever wished that the Imperial Treasury should cease to share the burden of American government. They had not apprehended the distinction which separated American from colonial interests on the one hand, and from Imperial interests on the other. Therefore

British statesmen and philosophers in the eighteenth century had not worked out the

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 72-3.

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distinction  
now  
recognized  
between  
provincial,  
Dominion,  
and  
Imperial  
interests.

it was impossible that they should rise to the idea that purely American interests should be controlled exclusively by Americans, as purely Canadian interests are now controlled exclusively by Canadians. The nearest approach to these truths in that age was made by Adam Smith, when he urged that the representation of the colonists in the Imperial Parliament was the only alternative to independence. Smith had not lived in colonies and, with all his political insight, failed to grasp the distinction between colonial, American, and Imperial interests, or to see that in the long run American interests must be controlled and paid for by Americans alone. Even minds so penetrating as those of Smith or Chatham could not travel more than a certain distance beyond the limits of their own experience.

But repre-  
sentation  
in a  
common  
Parlia-  
ment  
would  
have  
enabled  
men on  
both sides  
to arrive  
at this  
necessary  
distinc-  
tion.

It is the subsequent experience of the British Commonwealth which has made these issues so clear to-day. But colonial representation, if it could have been achieved, would have opened the only path by which a peaceful solution could have been reached and the Commonwealth saved from schism. It would have given the two peoples and their leaders some insight into the vital necessities of each other's life, and have enabled them, therefore, to grasp the real problem before them. No serious historian would now contend that the British people or their statesmen were anxious to assert or to exercise the right of taxing the Americans. Modern research has abundantly proved that the desire to sever their connection with Britain was limited to a very small, though very active, minority in America. The vast majority had been bred under a system which offered the privileges of life in a commonwealth without calling upon them to bear a due proportion of the burden involved in sustaining the system. Theirs was a spurious freedom, one



which could not teach them the real cost which had to be paid by some one for the benefits it brought them. Willingness to pay their own footing is the final test of a people's capacity to govern themselves. But the system must be such as to enable them to realize what costs are properly chargeable to their own account. The moral perceptions of the colonists had, indeed, been blunted by exclusion from all but the narrower responsibilities of national life. Their resistance during and after the War of Independence to any proposals for taxation advanced by Congress show how seriously their political *morale* had suffered under the influence of the commercial system. But when, having quitted the protection of Britain, they found that there was no one but themselves to meet the cost of American administration, they were at length brought face to face with the naked facts. That they were a people amenable to the discipline of facts, and therefore fit for self-government, was finally proved by their acceptance, in 1789, of an American Government with effective powers of taxation.

'According to the British view, the colonies were virtually represented in Parliament,' for the extraordinary reason that in England the majority had no votes and the great manufacturing towns which contributed largely to taxation were not represented.<sup>1</sup> The existing system of representation in Britain was wholly obsolete, and needed the Reform Bill to remove its anomalies. The great towns were in fact unrepresented until they elected members of their own to sit in Parliament. But that was no reason why the colonists should also submit to taxation without representation. Two wrongs did not make one right. The whole plea was as flimsy and worth-

Representation  
of the  
colonists  
in the  
Imperial  
Parliament  
advocated  
by Otis,  
Franklin,  
Adam  
Smith,  
and  
Grenville.

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 297. Also Lecky, *A History of England in the Eighteenth Century*, vol. iv. p. 77.

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less as its modern counterpart—the plea that the British Cabinet virtually represents the people of the Dominions in the conduct of foreign affairs. Such arguments are never wanting to apostles of ‘a wise opportunism’ who hold that in human affairs all principles are always open to evasion so long as every one concerned will only conspire never to state them. From that day to this there has been an almost general agreement among ‘practical persons’ to regard all proposals to include American representatives in the British Parliament as inherently absurd. But the contemporary exceptions to this rule are somewhat striking. ‘A few voices were raised in favour of the admission of American representatives into Parliament; but this plan, which was advocated by Otis and supported by the great names of Franklin and of Adam Smith, would have encountered enormous practical difficulties, and it found few friends in either country. Grenville himself, however, appears to have for a time seriously contemplated it. As he was accustomed to say to his friends, he had never entertained the smallest design against American liberty, and the sole object of his colonial policy was to induce or oblige America to contribute to the expense of her own defence in the same manner as Ireland. He had consulted the colonial agents in order that the colonies might themselves suggest the form of the contribution, and establish the precedent of being always in such cases consulted. He had deferred the Stamp Act for a whole year in order that the colonies might, if they chose, make imperial taxation unnecessary; and if the Americans thought that their liberties would become more secure by the introduction of American representatives into the British Parliament, he was quite ready to support such a scheme. He would probably, however, have found it not easy

to carry in England, and it was soon after utterly repudiated in America.<sup>1</sup>

Grenville, according to Beer, was a statesman 'of a scientific and unimaginative temperament, with a distinctly legal cast of mind.'<sup>2</sup> Whatever his defects, they were certainly not those of a theorist or a visionary. His reason for not asking Parliament to open its door to American representatives was not, it appears, that he thought that nature was opposed to such a scheme, but that he felt that the inveterate prejudice of Parliament itself stood in the way. What he lacked was the imagination which might have inspired him to overcome it. The kind of conservatism with which he had to contend dominated even a mind so active as Burke's. After his fall Grenville published a pamphlet in which he continued to advocate the principle of his financial measures, together with such measures of reform as would make Parliament at once representative of Britain and the colonies. Burke's reply is worth quoting at length as the highest intellectual expression of the attitude of mind in British political circles which closed the door to any but a violent solution of the American question. 'Has he well considered what an immense operation any change in our constitution is? how many discussions, parties, and passions, it will necessarily excite; and, when you open it to enquiry in one part, where the enquiry will stop? Experience shews us, that no time can be fit for such changes but a time of general confusion; when good men, finding everything already broken up, think it right to take advantage of the opportunity of such derangement in favour of an useful alteration. Perhaps a time of the greatest security and tranquillity both at home

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Grenville deterred by British conservatism from proposing colonial representation. Burke's objection to the proposal.

1765.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 71-2.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, p. 274.

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and abroad may likewise be fit ; but will the author affirm this to be just such a time ? Transferring an idea of military to civil prudence, he ought to know how dangerous it is to make an alteration of your disposition in the face of an enemy.

‘Now comes his American representation. Here too, as usual, he takes no notice of any difficulty, nor says anything to obviate those objections that must naturally arise in the minds of his readers. He throws you his politics as he does his revenue ; do you make something of them if you can. Is not the reader a little astonished at the proposal of an American representation from that quarter ? It is proposed merely as a project of speculative improvement ; not from the necessity in the case, not to add anything to the authority of parliament, but that we may afford a greater attention to the concerns of the Americans, and give them a better opportunity of stating their grievances, and of obtaining redress. I am glad to find the author has at length discovered that we have not given a sufficient attention to their concerns, or a proper redress to their grievances. His great friend would once have been exceedingly displeased with any person, who should tell him that he did not attend sufficiently to those concerns. He thought he did so, when he regulated the colonies over and over again ; he thought he did so, when he formed two general systems of revenue ; one of port-duties, and the other of internal taxation. These systems supposed, or ought to suppose, the greatest attention to, and the most detailed information of, all their affairs. However, by contending for the American representation, he seems at last driven virtually to admit, that great caution ought to be used in the exercise of *all* our legislative rights over an object so remote from our eye, and so little connected with our immediate feelings ; that in

prudence we ought not to be quite so ready with our taxes, until we can secure the desired representation in parliament. Perhaps it may be some time before this hopeful scheme can be brought to perfect maturity, although the author seems to be in no wise aware of any obstructions that lie in the way of it. He talks of his union, just as he does of his taxes and his savings, with as much *sang froid* and ease as if his wish and the enjoyment were exactly the same thing. He appears not to have troubled his head with the infinite difficulty of settling that representation on a fair balance of wealth and numbers throughout the several provinces of America and the West Indies, under such an infinite variety of circumstances. It costs him nothing to fight with nature, and to conquer the order of Providence, which manifestly opposes itself to the possibility of such a parliamentary union.

‘But let us, to indulge his passion for projects and power, suppose the happy time arrived, when the author comes into the ministry, and is to realize his speculations. The writs are issued for electing members for America and the West Indies. Some provinces receive them in six weeks, some in ten, some in twenty. A vessel may be lost, and then some provinces may not receive them at all. But let it be, that they all receive them at once, and in the shortest time. A proper space must be given for proclamation and for the election; some weeks at least. But the members are chosen; and, if ships are ready to sail, in about six more they arrive in London. In the mean time the parliament has sat and business far advanced without American representatives. Nay, by this time, it may happen, that the parliament is dissolved and then the members ship themselves again, to be again elected. The writs may arrive in America, before the poor members of a parliament in

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which they never sat can arrive at their several provinces. A new interest is formed, and they find other members are chosen whilst they are on the high seas. But, if the writs and members arrive together, here is at best 'a new trial of skill amongst the candidates, after one set of them have well aired themselves with their two voyages of 6,000 miles.

'However, in order to facilitate every thing to the author, we will suppose them all once more elected, and steering again to Old England, with a good heart, and a fair westerly wind in their stern. On their arrival, they find all in a hurry and bustle; in and out; condolence and congratulation; the crown is demised. Another parliament is to be called. Away back to America again on a fourth voyage, and to a third election. Does the author mean to make our kings as immortal in their personal as in their politic character? or, whilst he bountifully adds to their life, will he take from them their prerogative of dissolving parliaments, in favor of the American union? or are the American representatives to be perpetual, and to feel neither demises of the crown, nor dissolutions of parliament?

'But these things may be granted to him, without bringing him much nearer to his point. What does he think of re-election? is the American member the only one who is not to take a place, or the only one to be exempted from the ceremony of re-election? How will this great politician preserve the rights of electors, the fairness of returns, and the privilege of the House of Commons, as the sole judge of such contests? It would undoubtedly be a glorious sight to have eight or ten petitions, or double returns, from Boston and Barbadoes, from Philadelphia and Jamaica, the members returned, and the petitioners, with all their train of attornies, solicitors, mayors, select men, provost marshals, and above five hundred or a thousand

witnesses, come to the bar of the House of Commons. Possibly we might be interrupted in the enjoyment of this pleasing spectacle, if a war should break out, and our constitutional fleet, loaded with members of parliament, returning officers, petitions, and witnesses, the electors and elected, should become a prize to the French or Spaniards, and be conveyed to Carthagena or to La Vera Cruz, and from thence perhaps to Mexico or Lima, there to remain until a cartel for members of parliament can be settled, or until the war is ended.

‘In truth, the author has little studied this business; or he might have known, that some of the most considerable provinces of America, such, for instance, as Connecticut and Massachusetts Bay, have not in each of them two men who can afford, at a distance from their estates, to spend a thousand pounds a year. How can these provinces be represented at Westminster? If their province pays them, they are American agents, with salaries, and not independent members of parliament. It is true, that formerly in England members had salaries from their constituents; but they all had salaries, and were all, in this way, upon a par. If these American representatives have no salaries, then they must add to the list of our pensioners and dependents at court, or they must starve. There is no alternative.

‘Enough of this visionary union; in which much extravagance appears without any fancy, and the judgment is shocked without any thing to refresh the imagination. It looks as if the author had dropped down from the moon, without any knowledge of the general nature of this globe, of the general nature of its inhabitants, without the least acquaintance with the affairs of this country. Governor Pownall has handled the same subject. To do him justice, he treats it upon far more rational principles of specula-

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tion; and much more like a man of business. He thinks (erroneously, I conceive; but he does think) that our legislative rights are incomplete without such a representation. It is no wonder, therefore, that he endeavours by every means to obtain it. Not like our author, who is always on velvet, he is aware of some difficulties; and he proposes some solutions. But nature is too hard for both these authors; and America is, and ever will be, without actual representation in the House of Commons; nor will any minister be wild enough even to propose such a representation in parliament; however he may choose to throw out that project, together with others equally far from his real opinions, and remote from his designs, merely to fall in with different views, and captivate the affections, of different sorts of men.'<sup>1</sup>

Burke's  
real objec-  
tion to  
American  
represent-  
ation fear  
that it  
might  
lead to  
drastic  
reforms  
in the  
House of  
Commons.

The whole passage is a warning against the dangers of eloquence. Nothing is easier for a man with the gift of words than to pour ridicule on a constructive proposal he dislikes. The ridicule once uttered, he drifts with fatal facility into the belief that it constitutes the real ground of his objection. The true motive at the bottom of his mind may be gathered from a letter written about December 1779 to thank Maseres, the Attorney-General of Canada, for a copy of the *Canadian Freeholder*, a pamphlet answering Burke's arguments against colonial representation in the Imperial Parliament. 'I confess,' wrote Burke, 'I still feel in my mind many objections to the representation you propose. To make it at all practicable, you are obliged, when you come to seat American representatives, to alter exceedingly the tenure and terms on which the present members sit. I believe many more alterations, and some fundamental, would be necessary

<sup>1</sup> Burke, *Works*, vol. ii. pp. 136-143.



on such an occasion.'<sup>1</sup> What he dreaded was, in plain words, the reform of Parliament, which the younger Pitt might have carried before the century was closed if the crisis of the French Revolution had not postponed its accomplishment till 1832.

Had Burke exerted his influence to overcome instead of to justify the conservatism of the British Parliament, a pedestrian statesman like Grenville might have been encouraged to propose, and Parliament have been persuaded to accept, such a measure as would have robbed of all its strength the case which the extremists were urging in America. Those of them like Adams, who consciously desired separation, were the merest handful. A substantial minority, as the event proved, were ready to risk their lives and fortunes rather than surrender their status as citizens in the British Commonwealth. Others, like Washington himself, were pushed step by step into active resistance, because, to men jealous of liberty, no other exit from the position was opened. A frank invitation to send representatives would have opened such an exit, and until it had been tried and had failed, Washington and others who thought with him were not the kind of men to resort to violent solutions. Such an invitation is very difficult to refuse, as Scottish constituencies had found in the time of Queen Anne. But the most significant fact of all was the frenzy of apprehension betrayed by Adams and others who desired separation, whenever the proposal was mentioned. The colonies found no difficulty in sending agents to London; and what right had any one to assume that in America no candidates would be found to offer themselves for election, or that the constituencies would simply ignore the summons to return them?

Difficulty  
of  
rejecting  
an offer of  
represent-  
ation had  
one been  
made.

<sup>1</sup> *Burke's Correspondence*, edited by the Earl Fitzwilliam, 1844, vol. ii. p. 310.

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Common  
discussion  
of the  
problem  
in Parlia-  
ment  
might  
have  
pointed  
the way  
to the  
establish-  
ment of a  
Dominion  
Govern-  
ment in  
America.

It is worth considering what the result might have been if the first proposals to tax America for American purposes had been raised in a Parliament which included Americans. Apart from a few firebrands, the colonists merely desired to resume their old freedom from all but purely colonial taxation. Even in 1773, the Massachusetts Assembly simply asked to be restored to the situation they were in before the Stamp Act.<sup>1</sup> The people at large were not in a position to grasp the reality of intercolonial needs, or to see that those needs must be paid for by some one. In a country where the orators all took one side and no one was responsible for putting the other, it is not to be wondered at that many should have thought that the British were attempting to tax Americans for the benefit of Britain. Few realized that the continuance of the existing situation meant saddling the British taxpayer with the cost of American administration. Americans never saw themselves as the British saw them. No more was the gross outrage on colonial sentiment involved by the Stamp Act realized in Britain. Each party knew that the position adopted by the other was an impossible one, but neither recognized the impossible nature of its own. Repeated discussion in a public assembly by representatives of both sides could scarcely have failed to reveal to some of them the weakness of their own case. The specious theories of the commercial system, which enabled the Americans to argue as though Britain were under contract to furnish military defence, local as well as general, could scarcely have stood the ordeal of public debate. The old colonial system, with its underlying principle of contract, would never have survived so long had it been exposed to discussion in a Parliament which included spokesmen for all the communities which it

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 160.

purported to connect. Face to face with ministers in Parliament American representatives would have realized in time that the only Government which could act for America as a whole was compelled to grapple with the Indian problem, was compelled therefore to maintain expensive forces, and would ere long be compelled to pass laws regulating the relations of settlers and natives. Other intercolonial problems, such as boundary disputes, would have been forced on their notice, and they might gradually have realized the existence of American interests which lay beyond the scope of the colonial assemblies. They might also have seen the inconvenience of settling them in Britain and have recognized the necessity of an intercolonial Government, through which Americans might dispose of such matters for themselves. By intercourse with colonial colleagues British members might have seen the wisdom of leaving American as well as colonial affairs to be controlled in America. Their American colleagues might have seen that, if Americans must manage American affairs, they must likewise meet the cost for themselves.

An American Government once established, the process of discovering and defining the line which divides Dominion from Imperial responsibilities would have begun—the process afterwards initiated with the institution of responsible government in Canada. Not without a long struggle, doubtless, but yet without schism or bloodshed, the British Commonwealth might have arrived at the momentous discovery that in a state distinguished from all others by the fact that it exists to unite in one organic whole, not merely different classes mixed together, nor different races living side by side within the circle of one frontier, but different levels of civilization and different communities separated by oceans—that in such a unique state the control of trade is a function proper

The institution of a Dominion Government in America might have resulted in the important discovery that the control of tariffs in the British Commonwealth is a function proper to the Dominion, not to the Imperial authority.

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VI

rather to the territorial parts than to the whole. The control of fiscal relations in a world-state is a territorial, not an Imperial function. The question is one, not of right, but of necessity and of good government. The experience of the British Commonwealth may surely be taken to have proved that each Dominion must shape for itself the structure of its own society through its own Government. The physical conditions of the United Kingdom, of Canada, of Australia, of New Zealand, and of South Africa all differ, and all therefore demand the development of corresponding differences in the societies inhabiting them. No central Government could have the knowledge, nor, if it had the knowledge, the time, to adapt the framework of these widely sundered communities each to their local environment. It is the essential quality of freedom, which means power of self-adaptation to circumstance, that each part should be left to do this for itself. The condition of its power to do so is that each territorial community should acquire an organic Government adequate for the purpose. Such a Government has now been acquired by every Dominion. The title of each Dominion to control its own internal system of communications, its railways, its canals, is simply based on the fact that it, and it alone, can control them with effect. It is only necessary to imagine that such control had been finally left to colonial or provincial assemblies, or that an attempt had been made to vest it in the hands of an Imperial Government, however representative, to see that this is so. The same considerations apply to tariffs. The creation of Dominion Governments was largely due to the economic paralysis caused by leaving the control of tariffs in the hands of provincial and colonial governments. The attempt of the revolted American colonies to control tariffs led them to the brink of an internecine war on the

morrow of their struggle with Great Britain. But it is safe to say that any attempt on the part of an Imperial Government to frame a system of tariffs for all its widely sundered communities would produce evils far worse than a similar attempt to control the development of their railways from the centre.

It is happily a matter not now in dispute between any parties in any part of the Empire that each self-governing unit must retain a final and absolute control of its own fiscal system. This general agreement is not in the least affected by the rise in the last decade of a school which urges that each Dominion Government should, in framing their tariffs, accord preferences to each other of their own free will. Neither in the Dominions nor in the United Kingdom has any recognized party advocated the transfer to any central legislature of the ultimate power to modify tariffs. It has long been the accepted policy of the British Government to cancel any provisions in treaties operating in restraint of the absolute control of its own exports and imports accorded to a Dominion Government. The principle that the trade relations of self-governing communities must, in the interests of all, be controlled by each for itself is no longer in dispute, and it is safe to predict that it never will be. What is now so clear was exceedingly obscure in the middle of the eighteenth century, before the experience which has made it obvious had been gained. But if once there had been established in America a Dominion authority competent to handle the Indian and other intercolonial questions, it is not too much to suppose that the absolute necessity of leaving it to control the trade of America would in time have been felt. To have effected the change would, as in the case of Canada, have required a struggle, but it is at least possible that the struggle, as in Canada, would have been bloodless and constitutional.

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The  
creation  
of an  
American  
legislature  
through  
the agency  
of a repre-  
sentative  
Imperial  
Parlia-  
ment a  
possible  
expedient.

1754.

The  
inclusion  
of their  
repre-  
sentatives  
in an  
Imperial  
Parlia-  
ment  
would in  
time have  
initiated  
the  
colonists  
to the  
wider  
responsi-  
bilities  
of the  
Common-  
wealth.

It is idle to suggest that, had Grenville been content to wait, the colonial assemblies would themselves have evolved a plan for an American Government. Their reception of the Albany proposals and their whole conduct in the two wars with France and Britain point directly to the opposite conclusion. The public opinion which eventually overruled them and called into being the Government of the United States was the fruit of a tremendous experience. So also was the authority of Washington, whose patriotism public opinion had learned to trust. Elective assemblies are as jealous of their own personal authority as hereditary princes, for like princes they are just creatures of clay. So long as governments are composed of men, so long will those men have interests of their own distinct from those of the people they govern, and liable therefore to deflect and narrow their judgment. To create an American Government it would have been necessary to evoke the legislative authority of the Imperial Parliament, as urged by Franklin in 1754; but a measure enacted with the approval of the American representatives in that Parliament would scarcely have led to armed resistance.

Gradually the habit would have been formed of accepting the decisions of the Imperial legislature as final, and the necessity of an Imperial legislature would have been realized. With their representatives in that body the colonists would have developed the same sense of responsibility for the Commonwealth as their fellow-citizens in the British Isles. The duty of keeping the whole inviolate would have become just as sacred in their eyes. Any policy directed to that end would have been theirs no less than that of the British people, and must inevitably have associated them with the conduct of East Indian affairs, always inseparable from that of foreign affairs.

Thus they would have been brought with their fellow-citizens in Britain into touch with the widest of all civilized functions, that of maintaining in contact without conflict the East and the West. They would then have shared in the titanic burden of holding in equilibrium the diverse elements of the human race.

On both sides of the Atlantic the theory that the schism of the Commonwealth was foreordained has acquired the authority of a creed. According to historians the business of statesmen was to recognize this, and to have seen to it that the independence of America was consummated with bows instead of with blows. They are some of them concerned to adjudicate the exact measure of blame due to each for an issue less fertile in glory than in bloodshed and bitterness. That task will not be attempted here. What has been, has been, and God Himself cannot change the past. But since to mere human intelligence has been given the power to mould the future, the purpose of the present inquiry is to examine what dead men ought to have done, only as a clue to discovering what living men, and men yet to live, are called upon to do. This at least is clear, that a policy of opportunism availed the Commonwealth but little at the crisis of its fate. No worse consequences could have befallen if Grenville had had the genius to see that in such a crisis the only safety lay in recognizing and applying the principles vital to its existence. The only possible path to a solution at once final and peaceful was to persuade Parliament to open its doors to the colonists before it attempted to assert its legal powers of taxation, and that path was never attempted. To have done so, indeed, would have needed the genius of a Pitt. Neither Grenville nor those who followed him had that genius. They did not see, as English

The offer of representation could have yielded no worse consequences than followed the attempt to enforce taxation without representation.

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statesmen who faced and solved the Scottish problem in 1707 had seen, that a constitutional operation, an act of political surgery, alone could avail to forestall the bursting of blood-vessels, or the ultimate disruption of the body politic. Few in America and scarcely any one in Britain realized that a crisis impended, and the colonial assemblies having failed to advance an alternative proposal, the Stamp Act was passed.

1764.

The Stamp Act policy gave a moral force to the Revolution which secured for it the support of men like Washington.

From that moment onwards the game was thrown into the hands of the small but ardent minority whose conscious purpose it was to destroy the authority of the Imperial Government in America. If Hampden was right in refusing to pay ship money, despite the fact that the public safety demanded the maintenance of a navy, the Americans were right in resisting the principle of the Stamp Act. The motive which actuated most of the colonists in their resistance was, however, not the motive which actuated Hampden. It was the reluctance of the colonists to assume obligations which were really theirs, born of a system which had never compelled them to see that these burdens were not only theirs, but vital to their existence. Under the commercial system the political conscience of America had become dormant; but it was not dead, and it is hard indeed to imagine Washington and Hamilton and men like them, upon whom the ultimate success of the movement depended, justifying so sordid a motive for opposing the Imperial Government. The Stamp Act elevated what would otherwise have been the meanest of causes almost into a religious duty. The colonists would have been untrue to all that was best in their English tradition had they admitted the principle that a Parliament, while failing to open its doors to them, could assert the right to be master of their fate.



One wholesome effect the Act had. For the first time it called into being a body which could in some sort think even if it could not act for the colonies as a whole. Nine states sent representatives to a Congress at New York, which drew up the case for the colonies in a statement of marked ability. They acknowledged not only that allegiance was due to the Crown, but likewise 'all due subordination to that august body, the Parliament of Gt. Britain.' They maintained, however, 'that it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally or by their representatives.'<sup>1</sup>

It was in the nature of things that assemblies so essentially local in their capacity as those of the colonies should have attracted to their ranks a class of politician especially prone to particularism. The type is seen at its best in the character of Samuel Adams. 'His strength lay in his vehemence, his total inability to see more than one side of any question, and still more in his subtle influence upon the Boston town meeting, upon committees, and in private conclaves . . . No view of the Revolution could be just which does not recognize the fact that in no colony was there a large majority in favor of resistance, and in some the patriots were undoubtedly in a minority. The movement, started by a few seceders, carried with it a large body of men who were sincerely convinced that the British government was tyrannical. The majorities thus formed, silenced the minority, sometimes by mere intimidation, sometimes by ostracism, often by flagrant violence. One kind of pressure was felt by old George Watson of Plymouth, bending his bald head over his cane as his neighbors one by one left the church in which he sat, because they would

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The Stamp Act Congress which followed was the first step towards American unity.

1764.

Methods by which the extremists committed the majority to resistance.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 80.

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not associate with a "mandamus councillor." A different argument was employed on Judge James Smith of New York, in his coat of tar and feathers, the central figure of a shameful procession.

'Another reason for the sudden strength shown by the Revolutionary movement was that the patriots were organized, and the friends of the established government did not know their own strength. The agent of British influence in almost every colony was the governor. In 1775 the governors were all driven out. There was no centre of resistance about which the loyalists could gather. The patriots had seized the reins of government before their opponents fairly understood that they had been dropped.'<sup>1</sup>

Anxiety  
of revolu-  
tionary  
leaders to  
suppress  
demands  
for repre-  
sentation  
in an  
Imperial  
Parlia-  
ment.  
Their  
success in  
doing so.

Jealousy of the Imperial authority was far more intense in the assemblies than amongst the people at large, and the first and dearest concern of these politicians was to scotch any movement, such as that which Franklin and Otis had approved, towards representation in the Imperial Parliament. Otis was one of the three delegates sent by the Massachusetts Assembly to the Stamp Act Congress. But he was bound by their instructions 'not to *urge* or consent to any proposal for any representation if such be made in congress.' The destructive influence of Samuel Adams had already prevailed against the constructive counsels of Otis, and indeed with Otis himself. The Stamp Act Congress endorsed the attitude of the Massachusetts Assembly and declared 'that the people of these colonies are not, and from their local circumstances cannot be represented in the House of Commons in Great Britain.' The resolution was repeated by the colonial assemblies like the chorus of a Greek tragedy, to be iterated down the centuries with the monotony of a parrot cry. Within three years it was so generally admitted as an axiom that

<sup>1</sup> Hart, *Formation of the Union, 1750-1829*, pp. 57, 64-5.

the colonies could not be represented in London, that the Massachusetts Assembly were able to deduce the desired conclusion that therefore Parliament could not tax the Americans. Nay more, such taxation without consent, 'grievous as it is, would be preferable to any representation that could be admitted for them there.'

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When the Albany Congress was convened on the eve of the Seven Years' War, ministers had come within an ace of perceiving that an American Union was the key to the problem. The conceptions, however, which underlay the commercial system were strong enough to lead British statesmanship in the opposite direction. Its maxims, which taught that colonies were to be united to the mother country by a mere calculation of convenience, pointed clearly to the wisdom of keeping the colonies weakened by their divisions and dependent on the sheltering arm of the Imperial Government. Burke himself was unable to escape the blighting influence of the prevalent creed; and, writing in 1769, he speaks of the Great Empire which 'we have to rule, composed of a vast mass of heterogeneous governments . . . all to be kept in peace and out of conspiracy with one another, all to be held in subordination to this country.'<sup>1</sup> On the lips of Louis XIV. such words would have been thoroughly appropriate, for to seek security in the divisions of their subjects is a motive natural to despots. From the rulers of a commonwealth such language is a sign that they are getting adrift of principles vital to its structure and growth. If once their policy is vitiated by the fallacy that interest rather than duty is to be relied upon as the ultimate bond of society, their maxims and methods will begin to resemble those of a despotism. From

1754.

British  
policy  
inspired  
by the  
commercial  
system  
opposed to  
American  
union.

1763.

<sup>1</sup> Burke, *Observations on a late Publication, intituled, the Present State of the Nation.*

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VI

Loyalist  
scheme for  
converting  
Congress  
into an  
American  
Government  
defeated  
by the  
indifference  
of  
British  
ministers  
and the  
hostility of  
American  
extremists.

the close of the Seven Years' War the desire to keep colonies divided became the conscious motive of British policy.

1774.

As noticed already, the dogma that representation of the colonies in the Imperial Parliament was physically impossible had been accepted in America even by those who most desired to avoid a rupture with Britain. The depth and sincerity of their loyalty to the Commonwealth prompted them, however, to work at the eleventh hour for an American Union as the one chance of avoiding a rupture. The habit now formed of meeting in Congress was a step in that direction, and Galloway, the loyalist leader, evolved the idea of converting Congress into an American Government under a British Viceroy. The scheme submitted by him to the first continental Congress in 1774 was closely modelled on that put forward in Albany twenty years before, except that it explicitly made the Acts of the American legislature subject to endorsement by the British Parliament, an arrangement which could scarcely have been maintained in practice. It was this feature, perhaps, which facilitated its ultimate defeat at the hands of the extremists, who, wanting not a settlement but a rupture with Britain, were determined to frustrate Galloway's proposal. In England opinion was at length developing in favour of such a plan as the one remaining chance of avoiding a rupture, but it was not strong enough to oblige ministers to support the loyalist proposal. Congress received it favourably at first, and referred it to a committee for report. The opposition, however, led by representatives from Massachusetts and Virginia, were able to secure, first, the rescission of this 'formidable motion' by a small minority, and presently its erasure from the minutes of the conference. The extremists had defeated a proposal which might have rendered

America governable within the limits of the British Commonwealth. Whether her people were ultimately to cut themselves off and to form an independent state, or whether they were to share with those of Britain the vast responsibilities which were crowding upon the original Commonwealth, was a question which, as in the case of the Dominions at the present day, would then have been suspended for future solution. Galloway's motion would have disentangled two interrelated but yet perfectly distinct problems, that of the government of America and that of America's connection with Britain. Its defeat left them hopelessly mixed, and by securing its rejection the extremists in America closed the last avenue by which a peaceful and constitutional settlement might have been reached. In Britain the statesmanship which guided the destinies of the Commonwealth was that of laths painted to look like steel, which resist only to break, and break only to lacerate with splinters the hands that press them. To them the extremists in America owed their ultimate success in overcoming the profound disinclination of the majority to an armed conflict.

So feeble, indeed, was the executive machinery of the British Government that it was unable to collect the taxes imposed by the Stamp Act in the face of opposition, and in 1766, Grenville having fallen, the Act was repealed. To save its face, however, Parliament passed an Act declaring its own right to make laws binding the colonies. The real objection to the Stamp Act was, that it violated the principle that a people fit to govern themselves must have a voice in all taxes levied upon them. But the opponents of the Act were faced by the fact that the colonies had under the commercial system always acquiesced in the payment of taxes which, though insignificant in amount, were imposed by a British Act of Parliament.

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To begin with, colonists and their supporters in England assumed the untenable position that Parliament is excluded only from the right of internal taxation in the colonies.

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With the instinct of their race to distrust principles and rely on precedents, the opposition in Britain as well as in America at first took their stand on the ground that, while Parliament might regulate the customs, inland revenue, as the Treasury would now term it, was the preserve of the colonial assemblies. Their champion in the House of Commons took his stand upon distinctions which were no less artificial. 'Pitt, illogically and unscientifically, maintained that Parliament's absolute legislative authority over the colonies did not include the power of taxation.'<sup>1</sup> But events were soon to teach both parties that either Parliament or the colonial assemblies must be recognized as absolute in America. It was not in the nature of sovereignty that it could be divided between them both.

Townshend's proposals for raising revenue from the colonies by external taxation.

1767.

Pitt's return to power in 1766 as Earl of Chatham did not improve matters, since in 1767 he became too ill to attend to business, and the reins of government fell into the hands of Charles Townshend, the Chancellor of the Exchequer. By this time the British Government were in direct collision with two of the colonial assemblies over the Mutiny Act, which required the colonists to furnish the English troops with some of the first necessities of life. Boston disputed this obligation at every point, and New York positively refused to obey. The ultimate issue, the question where sovereignty lay, was rapidly being forced to the front. Townshend determined to assert the authority of the British Government in America, and introduced a series of measures to give effect to his policy. By one, the governor was forbidden to give his sanction to any law passed by the New York Assembly till the terms of the Mutiny Act had been complied with in that colony. By another, a board of commissioners was established in America with largely

<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, p. 307.

extended powers for administering the laws relating to trade. In Townshend's view the distinction between internal and external taxation, upon which the colonies had laid such stress and which Chatham himself had approved, was worthless. Townshend's proposal, however, was to take the colonists at their word and to raise the revenues necessary for colonial defence by additional duties upon glass, red and white lead, painters' colours, paper, and tea imported into the colonies.

The Stamp Act was the first serious attempt by Parliament to encroach upon the internal revenues of which the colonists were accustomed to dispose for themselves through their own assemblies. Until recent years the customs duties had been too easily and too freely evaded to be felt, and there was nothing to counteract the growth of the idea, which had long been a habit of mind with the colonists, that no authority was entitled to tax them but the local assembly responsible to themselves. It is a commonplace of history that the Crown, once deprived of the right to levy taxation without the consent of Parliament, could not continue as the mainspring of government. Sooner or later sovereignty must be recognized to have passed to the organ wherein the actual power of taxation lies. Parliament was now to learn the unpalatable truth that the principle is no less true in the case of assemblies than it had been in the case of monarchs. But a few years of bitter experience were needed to teach the Americans themselves that 'power without revenue, in political society, is a name.'<sup>1</sup> In whatever organ of the state there exists an effective power of taxation, there sovereignty will be found to reside.

The principle that sovereignty involves the power to tax recognized and asserted by Parliament.

Townshend, recognizing the vital importance of

<sup>1</sup> Alexander Hamilton, *Works*, vol. i. p. 262.

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Townshend's] resolve to bring it to an issue endorsed by Parliament. The battle of Lexington the result.

the question at stake, resolved to put it to the test. The revenue anticipated from the measures he proposed amounted to less than £40,000 per annum, and was to be employed in paying the salaries of the governors and judges in America, the surplus, if any, to go towards the cost of colonial defence. Certain remissions of duty were granted to the colonies at the same time. Townshend's policy was accepted by Parliament, and henceforward the real issue at stake was whether the experience and will of its own inhabitants or those of Britain were to determine the destinies of America. The possibility that the safety of Britain and America might still be treated as a common interest to be controlled by the common will of the inhabitants of both countries faded from the view of either party. On September 5, 1774, the delegates of twelve colonial assemblies met in Congress at Philadelphia. "The die is now cast, the colonies must either submit or triumph," were the words of George III.<sup>1</sup> On April 19, 1775, hostilities broke out at the battle of Lexington. But it is an error to suppose that the Americans were in any sense united in opposition to the claims of Britain. 'The more closely the correspondence of the time is examined the more evident it will appear that, in the middle colonies at least, those who really desired to throw off the English rule were a small and not very respectable minority. The great mass were indifferent, half-hearted, engrossed with their private interests or occupations, prepared to risk nothing till they could clearly foresee the issue of the contest. In almost every part of the States—even in New England itself—there were large bodies of devoted loyalists.'<sup>2</sup>

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 175.

<sup>2</sup> *Ibid.* pp. 380-1. On this whole subject see Note I at end of this chapter, pp. 415-17.



Fifteen months of civil war had elapsed before Congress could be brought to call on the colonists to renounce for ever their citizenship in the British Commonwealth. 'Even after the enlistment of foreign mercenaries by Great Britain, the difficulty of carrying the Declaration was very great. As late as March 1776, John Adams, who was the chief advocate of the measure, described the terror and disgust with which it was regarded by a large section of the Congress.'<sup>1</sup> Its leaders, however, now saw that without foreign support the colonies would infallibly be crushed, and turned to their old enemy, France. But France had no possible interest in supporting them until they were pledged to the dismemberment of the British Commonwealth, and on July 4, 1776, Congress nerved themselves to issue the Declaration of Independence.

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Unwillingness of the colonists to declare their independence. The step rendered necessary in order to obtain the assistance of France.

1776.

The step was taken just in time to revive the failing energies of the Americans and to secure the active intervention of France, without which, as Lecky has shown, the revolt would have failed. 'A large minority detested the revolution. A large majority were perfectly indifferent to it, or were at least unwilling to make any sacrifice for it. Jealousies and quarrels, insubordination and corruption, inordinate pretensions and ungovernable rapacity divided and weakened its supporters. The extreme difficulty of inducing a sufficient number of soldiers to enrol themselves in the army of Washington, the difficulty of procuring cannon and gunpowder and every kind of military stores, the want of woollen clothes and of other important articles of European commerce, the ruin, the impoverishment, and the confusion that resulted from the enormous depreciation of the currency, and finally the impossibility of paying for the essential services of the war, made

The success of the Americans only made possible by French help.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 244-5.

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it probable that a peace party would soon gain the ascendent, and that the colonies would soon be reunited to the mother country.

‘If America had been left unaided by Europe this would probably have happened. A large proportion of the States would almost certainly have dropped off, and although the war might have been continued for some time in New England and Virginia, it was tolerably evident that even there no large amount of gratuitous service or real self-sacrifice could be expected. Washington himself at one time gravely contemplated the possibility of being reduced to carry on a guerilla warfare in the back settlements. But at this most critical period foreign assistance came in to help, and it is not too much to say that it was the intervention of France that saved the cause.’<sup>1</sup>

The  
Revolution  
supported  
by France.  
The  
American  
claim  
yielded by  
Britain.

1778.

The British Commonwealth was now divided against itself, and France saw her chance of perpetuating the division and of humbling her ancient rival in the dust. Congress, however, had found the states scarcely more generous in responding to its requisitions than they had been in responding to those of the British Government. The resources of the Revolution were almost exhausted when France, though still hesitating to declare war, began to refresh them with secret loans and volunteers. Burgoyne’s surrender, however, in October 1777 decided her, and in the beginning of 1778 she recognized the independence of North America, and war was declared. The English Parliament endeavoured to compose the struggle by surrendering everything for which they had contended. An enactment was passed whereby England resigned for ever the right to levy taxation in the colonies.<sup>2</sup> The Americans, however, apart from their obligations under the treaty with France, were now determined

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 401-2.

<sup>2</sup> See Note J at end of this chapter, p. 418.

on independence. Attempts on the part of England to prevent Europe from sending supplies to America had led meanwhile to the armed neutrality of Denmark, Sweden, Russia, and Holland, and to open war with Holland in 1780. 'The aspect of affairs at the close of 1780 might indeed well have appalled an English statesman. Perfectly isolated in the world, England was confronted by the united arms of France, Spain, Holland, and America; while the Northern league threatened her, if not with another war, at least with the annihilation of her most powerful weapon of offence. At the same time, in Hindostan, Hyder Ali was desolating the Carnatic and menacing Madras; and in Ireland the connection was strained to its utmost limit, and all real power had passed into the hands of a volunteer force which was perfectly independent of the Government, and firmly resolved to remodel the constitution. At home there was no statesman in whom the country had any real confidence, and the whole ministry was weak, discredited and faint-hearted. Twelve millions had been added this year to the national debt, and the elements of disorder were so strong that London itself had been for some days at the mercy of the mob.'<sup>1</sup>

Opposed by a world in arms Britain lost control of the sea, and in 1781 Cornwallis surrendered to Washington at Yorktown. All parties except the King now recognized that further effort was useless, and on November 30, 1782, provisional articles of peace between England and the United States ended the war by conceding the independence of the American colonies.

According to the estimates of Lecky there were scarcely less than 100,000 loyalists expelled from the colonies after the peace.<sup>2</sup> The struggle in fact had

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Britain confronted with the united hostility of Europe and America. Independence of the United States acknowledged in 1782.

1780.

1781.

The claim of the majority to remain neutral.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. v. pp. 73-4.

<sup>2</sup> *Ibid.* p. 208.

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assumed the character of a civil war between two minorities, the one determined to destroy, the other resolute to preserve the integrity of the Commonwealth. The majority, especially of the native-born colonists, were not prepared to risk their lives or property for either cause. They were to learn, however, that there are issues which do not admit of evasion. 'In January (1778) Washington issued a proclamation requiring those inhabitants who had subscribed to Howe's declaration to come in within thirty days and take the oath of allegiance to the United States. If they failed to do so they were to be treated as enemies. The measure was an eminently proper one, and the proclamation was couched in the most moderate language. It was impossible to permit a large class of persons to exist on the theory that they were peaceful American citizens and also subjects of King George. The results of such conduct were in every way perilous and intolerable, and Washington was determined that he would divide the sheep from the goats, and know whom he was defending and whom attacking.'<sup>1</sup>

Presently the British commander-in-chief followed suit and issued proclamations which rendered neutrality impossible.<sup>2</sup> The attitude of most of the colonists was purely negative. They did not see why they should be called upon to pay taxes they had never paid in the past, but questions of principle or allegiance made no appeal to them. By neglecting to ask their counsel and enlist their service the Commonwealth had failed to develop in these citizens any active affection towards itself. On the other hand, it had never oppressed them, 'for, as Moses Coit Tylor has well said, the colonies "made their stand, not against tyranny inflicted, but only against tyranny

<sup>1</sup> Lodge, *George Washington*, vol. i. p. 183.

<sup>2</sup> Lecky, *History of England in the Eighteenth Century*, vol. v. pp. 21-3.

anticipated.”<sup>1</sup> Most men are wanting in the imagination required to make them risk their lives in a struggle against tyranny until they have actually felt it. The one Government which really meant anything to them was their own colonial assembly, to which they sent members and to which they paid their few taxes. But it was not imposing enough to inspire the average colonist with the kind of devotion which makes a people spring to arms who have not felt the sting of actual oppression. Their politicians might talk of ‘these nations,’ but some community more truly national had to be created before the patriotism of the average American could be called into being. It was not surprising that the bulk of the population should claim the right to stand aside and leave the hotheads to settle such abstract questions for themselves. ‘Why,’ they may well have asked, ‘should the question whether they were British or American citizens be raised at all, or at any rate allowed to disturb the peace? If theorists must fight over it, why should the sober and practical majority be dragged into the struggle?’ Whether their allegiance was due to the British Commonwealth, or to their colony, or to the United States of America, were abstract questions which they saw no reason to raise themselves, or to answer if raised by others. They simply desired to be left alone.

Nothing is easier than for men to reason so who have never been called upon to consider what is the state to which their final allegiance is due. The reasoning would be just if the state were as other forms of association. It differs, however, from all of them in this, that it puts no limit to the duty which it may exact from each of its members. A commonwealth no less than an autocracy is, in the last

Inexorable  
character  
of the  
issues  
raised.

<sup>1</sup> *Literary History of the Am. Rev.* i. p. 8, quoted by Beer, *British Colonial Policy, 1754-1765*, p. 290.

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analysis, despotic in its claims. It cannot undertake to ask men whether they choose to enter or leave its service, to keep or lose their wealth, their homes, their wives, or their children, to live or to die. What it claims from its members is no less than their all; and whenever two states strive for the mastery, that claim will be made, and woe to the man who, when called upon to answer two such claims, thinks to evade both.

'Tis dangerous when the baser nature comes  
Between the pass and fell incensed points  
Of mighty opposites.

No true citizenship is possible for men until they have chosen the state to which they belong and know what they choose, and for those who imagine that they can sleep for ever without choosing a rude awakening is in store.

## NOTE A

INFLUENCE OF COMMERCIAL IDEAS ON COLONIAL POLICY IN  
THE SEVENTEENTH AND EIGHTEENTH CENTURIES

See page  
307.

'Theory and policy are the direct result of fundamental social conditions. The present colonial policy of Great Britain is largely based on the avowed desirability of finding homes within the Empire for British subjects,—“breathing spaces” for an expanding population, whose offshoots would otherwise be lost to the flag. This idea was alien to the spirit of the old Empire. The eighteenth century colonies were not looked upon as homes for a surplus population, simply because England was not overpopulated. The small population of Great Britain in comparison with that of her rival, France, emphasized the need for an increase in numbers. Hence, emigration was not encouraged, and there was no surer way to condemn a colony than to show that it tended to diminish the population of the mother country.<sup>1</sup>

<sup>1</sup> See, *e.g.*, *Political Considerations* (2d ed. London, 1762), p. 52. This pamphlet is attributed to James Marriott. In the cases of Georgia and Nova Scotia, military expediency outweighed this opposition, though in both instances the philanthropic motive was also a factor, naturally more so, however, on the part of the individuals interested, such as Oglethorpe and Coram,

‘Consequently colonies were esteemed in the main solely for commercial purposes. The ideal colony was that which furnished commodities which Great Britain could not herself produce, and which did not in any way compete with the industry of the mother country.<sup>1</sup> In their economic pursuits, mother country and colony were to be mutually complementary ; the aim was to create self-sufficient commercial Empire, which, while independent of competing European powers, would be able to make them economically dependent on it. To this ideal type of colony, the West Indies conformed more closely than did the continental colonies, with the exception of Georgia, South Carolina, Virginia, and Maryland. Newfoundland was merely a fishing establishment, and was highly esteemed on account of the fishery, which was a nursery of seamen, and hence a source of naval strength. The North American colonies between Maryland and Nova Scotia were not looked upon with favor, as they competed with the metropolis in a number of industries, especially in the production of food-stuffs, in the fisheries, in the ship-building and carrying-trades. At the same time, they had but little to export to the mother country, which was still largely agricultural. According to this theory of colonization, the essential thing was that the colony produced commodities that the mother country would otherwise have to buy from foreigners. Hence greater stress was laid on colonies as sources of supply, than as markets for British manufactures. The importance of the colony as a market was not entirely ignored, but was regarded as the natural corollary to the more vital fact that the colony furnished the mother country with raw materials not produced in Great Britain or with tropical products.’<sup>2</sup>

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than on the part of the government. In the case of both these colonies, as also in general in all the colonies, special efforts were made to build up their population by encouraging immigration from continental Europe. See 6 Geo. II, c. 25 § vii, and Declared Accounts, Audit Office, Bundle 2131, Roll 2: Sir J. Dick for transporting foreign Protestants from Holland to Nova Scotia.

<sup>1</sup> Josiah Tucker, in one of his earlier books, “A Brief Essay on the Advantages and Disadvantages which respectively attend France and Great Britain with regard to Trade” (2d ed. London, 1750), pp. 92-95, supported this view. To divert the colonies from manufacturing, he favored the policy of encouraging them to produce iron, naval stores, hemp, flax, silk, indigo, etc. See also *The Laws and Policy of England Relating to Trade* (London, 1765), pp. 33, 34, wherein it was held that colonies should produce commodities that England could not raise, such as silk, hemp, pitch, tar, rosin, turpentine, masts, sugar, tobacco, cotton, rice, and indigo.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 133-5.

## NOTE B

ATTITUDE OF THE AMERICAN COLONIES TOWARDS THE  
NAVIGATION LAWS

See page  
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'This system, however, did not stand by itself, but was integrally connected with that of imperial defence. What Patrick Henry called the "original compact between King and people, stipulating protection on the one hand and obedience on the other," was not a mere empty formula. The right of the mother country to regulate imperial trade, and the general manner in which this right was exercised, were justified in the eyes of nearly all, whether British or colonial, by the fact that through her navy Great Britain protected the colonies in peace and in war. Thus, in 1756, in connection with a Massachusetts law for encouraging the manufacture of linen in that colony, the Board of Trade wrote to Shirley: "The passing of Laws in the Plantations for encouraging Manufactures, which any ways interfere with the manufacture of this Kingdom, has always been thought improper, & has ever been discouraged. The great Expence, which this Country has been and is still at, for the defence and Protection of the Colonies, while they on the other hand contribute little or nothing to the Taxes with which it is burthen'd, gives it a just Claim to restrain them in such Attempts."<sup>1</sup> The same idea is also clearly expressed by Arthur Dobbs, when writing to the Earl of Halifax that he would do his utmost to stop "all such pernicious Illicite Trade Carried on with foreigners to the prejudice of the British Trade with these Colonies after the Immense Expence and Debt incurred in defence of our Civil and Religious Rights and Liberties and future Safety of the Extensive British Empire on this Continent and Islands: and therefore the Confinement of our Trade for the benefit of Britain against foreigners is a Tribute we ought to pay to our protectors."<sup>2</sup> As Dobbs was an able student of economic conditions, and as such had freely criticised on a somewhat comprehensive scale certain features of the system, his statement is all the more significant.

'Thus the fact that the mother country afforded protection gave an equitable basis to the colonial system, and justified it in the eyes of those to whom otherwise it would have appeared unfair to the colonies. During the eighteenth century, up to the controversies at the beginning of the revolutionary movement in 1764 and 1765, the colonies made no complaint against the trade laws as a whole. During these two generations there were many acute political controversies, but this system did not

<sup>1</sup> B. T. Mass. 84, p. 328.

<sup>2</sup> Jan. 14, 1764. Am. and W.I. 214.



figure in them at all.<sup>1</sup> The colonial attitude is well represented by Franklin, who, in 1754, after enumerating solely those regulations that restricted colonial trade, said: "These kind of secondary taxes, however, we do not complain of, though we have no share in the laying, or disposing of them."<sup>2</sup> As Franklin had an intellectual tendency toward those *laissez faire* ideas that two decades later were embodied in Adam Smith's monumental work, this is certainly not a prejudiced statement. Similarly, in 1764, James Otis, the leader of the revolutionary movement in its earlier phases, after calling attention to the fact that the colonies were "confined in their imports and exports, to the good of the metropolis," wrote: "Very well, we have submitted to this. The act of navigation is a good act, so are all that exclude foreign manufactures from the plantations, and every honest man will readily subscribe to them."<sup>3</sup>

'It should be noted, however, that a Swedish scientist who had travelled extensively in America, and had carefully observed many matters of interest, stated that as a result of the pressure of this system, the colonies were less warm to the mother country.<sup>4</sup> This in itself would not be surprising, as communities have always shown a tendency to dwell on the disadvantages and to ignore the benefits involved in a system of this nature. The accuracy of this observation is, however, open to question. The validity of the general doctrine that the mother country and not foreigners should supply the colonies, "provided the Mother Country can & does supply her Plantations with as much as they want" was admitted in 1762 by the Virginia Committee of Correspondence in a letter to the colony's agent in London.<sup>5</sup> Furthermore, men enjoying to the full the confidence

<sup>1</sup> Naturally, the Molasses Act, as in no sense an integral part of the system, is excepted from this statement.

<sup>2</sup> Franklin, Writings III, p. 236.

<sup>3</sup> James Otis, *The Rights of the British Colonists Asserted and Proved* (Boston, 1764), pp. 54, 55. Cf. also pp. 58, 76.

<sup>4</sup> "Genom et sådant tryckande sker, at Angelska Inwanarena uti Norra America äro mindre warne mot sit Moderland." Kalm, *En Resa Til Norra America* (Stockholm, 1756) II, p. 371. As this passage, together with the unhistorical habit of regarding past events from the viewpoint of a later age, has furnished the basis for the current thesis that the old colonial system, as it existed prior to 1763, was the fundamental cause of the American Revolution, it is advisable to give the context. After the above statement, Kalm says: "This coldness is kept up by the many foreigners such as *Germans, Dutch, and French* settled here, and living among the *English*, who commonly have no particular attachment to *Old England*; add to this likewise that many people can never be contented with their possessions, though they be ever so great, and will always be desirous of getting more, and of enjoying the pleasure which arises from changing; and their over great liberty, and their luxury often lead them to licentiousness." *Travels into North America* (Warrington, 1770), II, pp. 264, 265.

<sup>5</sup> Va. Mag. XI, p. 137.

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of the colonies, even favored a more restrictive system than was the prevailing one. In 1723, Francis Yonge, then the agent for South Carolina, and four years prior thereto one of the leaders of the revolution in that colony, presented a memorial to the Board of Trade, in which he advocated a more stringent regulation of colonial trade.<sup>1</sup> Similarly, in 1755, William Bollan, when agent for Massachusetts, presented to the Board of Trade a detailed memorial on the legal defects in the acts of trade, with a view to their remedy, and consequently a better enforcement of the system as a whole. At the same time he advised the placing of all kinds of colonial naval stores in the "enumerated list."<sup>2</sup> It is also not without some significance that Bollan was appointed agent, though he had been the prosecuting officer in the colonial Vice-Admiralty Court, and, as such, had for years been engaged in punishing violations of these laws.<sup>3</sup> Similarly, James Otis resigned from this position only at as late a date as 1761, in order to attack the use of "writs of assistance." There seems to be no adequate reason for rejecting Burke's view that during the eighteenth century, prior to 1764, the attitude of the colonies toward the system was one of acquiescence. "The act of navigation," he said, "attended the colonies from their infancy, grew with their growth, and strengthened with their strength. They were confirmed in obedience to it, even more by usage than by law."<sup>4</sup>

'It would even appear that instead of being a disintegrating factor, the system of trade regulation tended to give greater cohesion to the Empire. As has been pointed out, British policy had never been consistently directed toward creating a closely knit political empire. The aim was rather to create a self-sufficient economic empire, and, in the main, this result had been attained. The West Indian colonies were absolutely dependent on the monopoly of the British markets that had been accorded to them. Similarly, the prosperity of the continental colonies depended, in varying degrees, on the one hand on the British markets, or on the other hand on British colonial markets. The least dependent colonies were those producing tobacco; for through the long period during which it had enjoyed a monopoly, American tobacco had gained a firm hold on the British consumer. Hence it is not surprising to find that at this time there was some objection in Virginia to the "enumeration" of its staple crop.<sup>5</sup> South Carolina, though absolutely independent

<sup>1</sup> B. T. So. Ca. 1 A 86.

<sup>2</sup> B. T. Mass. 74 Hh 51, 52; John Chamberlayne, *Magnæ Britanniae Notitia*, part II, p. 59.

<sup>3</sup> Lords of the Admiralty to Sir Henry Penrice, April 19, 1742, ordering the appointment of Bollan as advocate of the Vice-Admiralty Court in Massachusetts. Adm. Sec. Out-Letters, 1054.

<sup>4</sup> Burke's *Speeches* (ed. 1816) I, p. 202.

<sup>5</sup> Burnaby, *op. cit.* p. 56.

in so far as rice was concerned, relied upon the British bounties on naval stores and indigo. North Carolina was similarly affected by the premiums on tar and pitch. The middle colonies and those of New England were especially dependent on those other British colonies that in the event of political independence would probably not throw in their lot with North America. The fisheries, the lumber industry, the provision trade, demanded free access to the British West Indies as well as to those of foreign nations. Then, only because they were British colonies, was the large trade to Newfoundland open to them. To some degree also these colonies relied on the naval-store bounties. In addition, the prosperity of their ship-building industry depended to a great extent on the sale of vessels to Great Britain, and on the large carrying-trade between various parts of the Empire.<sup>1</sup>

## NOTE C

TENDENCY OF ENGLISH STATESMEN TO DISCOURAGE THE  
GROWTH OF NEW ENGLAND COLONIES

'In 1671, the Earl of Sandwich—one of the surviving Cromwellian worthies—put in writing his opinion of the New England situation, which was based upon the many sources of information open to him as President of the Council for Plantations. New England was already at that date, he said, a numerous and thriving people and in twenty years was likely "to be mighty rich and powerfull and not at all carefull of theire dependance upon old England." As a result, England was exposed to the following inconveniences: 1, the loss of her exports of manufactures to these colonies—"possibly to the value of £50,000 per ann."—and moreover the likelihood of their competing with England in the sale of such goods in foreign markets; 2, the dependence of the West Indies upon them for provisions and "all wooden utensills," and the probability that they would also furnish those islands with other manufactures "that we doe," and so "reape the whole benefitt of those colonies;" their control of the trade in masts and naval stores in northern America, whose later development he foresaw. Sandwich realized that it was impossible "to prevent wholly theire encrease and arrivall at this power," but he deemed it "advisable to hinder theire growth as much as can be." With this object in view, he suggested: 1, the passage of an Act of Parliament prohibiting emigration to the colonies without license from the King—"at present 40 or 50 families or more goinge yearly thither;" 2, "to remooove as many people from New England to our southern plantations as may be, where

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<sup>1</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 204-10.

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the produce of their labours will not be commodities of the same nature with old England to out-trade us withall."

'Thus, however significant from the standpoint of universal history was the colonization of New England, however vital and fundamental a part it played in the transfer of European civilization to the American continent, these communities were in the eyes of contemporary statesmen but the unfortunate results of misdirected efforts, since in no way did they answer the national ends of their creation. It would be difficult to over-emphasize the influence of New England in the genesis of the American Nation, but the English government, when directing the movement of colonization, did not aim to create embryonic national states, but colonies of the plantation type or trading and fishing stations, whose commercial and political welfare would be intimately bound up with that of the metropolis. That the outcome was far different from the one contemplated is merely one of the innumerable historical instances in which forces beyond the foresight of contemporaries in the end turned their labors towards an entirely different result. It was the inexorable force of circumstances, not choice, that first made England the "Mother of Nations." The course of events in Massachusetts was the most potent factor in forcing this unwelcome rôle upon England.'<sup>1</sup>

## NOTE D

EVASION OF THE NAVIGATION ACTS BY NEW ENGLAND  
MERCHANTS

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'On April 10, 1676, was read before the Lords of Trade a petition from the mercers and silkweavers of London, stating that formerly large quantities of silks had been shipped from England to the colonies, but that in recent years they had been supplied by the New England traders with goods imported directly from France, Italy, and other foreign countries, "so that yo<sup>r</sup> pet<sup>r</sup> send little or none thither, by meanes whereof they are many of them totally ruined, others of them greatly hurt, and most of them very much prejudiced." In addition to this illegal importation of silks and stuffs, they asserted that the New Englanders furnished the other colonies with brandy, wine, oil, and other commodities, all of which by law ought to be shipped from England and pay customs there, and that the total loss to the revenue on these accounts "would amount to above sixty thousand pounds per Annum."<sup>2</sup>

<sup>1</sup> Beer, *The Old Colonial System*, Part I. vol. ii. pp. 233-5.

<sup>2</sup> C. O. 5/903, ff. 106-108; C. C. 1675-1676, pp. 374, 375. At this time, information was also received that the New England traders were implicated

‘Although grossly exaggerated, these statements demanded further investigation, and the Lords of Trade summoned before them a number of men qualified to give information, including some who were to be found at the Exchange, “upon the New England Walk.”<sup>1</sup> On their appearance before the Lords of Trade, some of the New England merchants “were shie to unfold y<sup>e</sup> mistery thereof, others pretended Ignorance, but the most of them declared plainly, how all sorts of goods growing in his Ma<sup>ties</sup> other Plantations were brought to New England on paym<sup>t</sup> of y<sup>e</sup> duties payable by the Act for going from one plantation to another.” With these goods, and often also with cargoes of logwood,<sup>2</sup> they then sailed to all parts of Europe, returning with merchandise to the colonies “without euer calling at Old England, but when they thought fitt,” so that wines, brandies and other commodities were sold in the colonies for one-fifth less than the English merchants trading according to law could afford to furnish them. This, they claimed, would entirely destroy England’s trade to the colonies “and leave no sort of dependancy in that place from hence.” Thereupon the Lords of Trade, thinking it “inconvenient to ravel into any of the past miscarriages, but to prevent the mischief in the future” resolved: 1, that all the colonial Governors should be obliged to take the oaths to obey the Acts of Trade and Navigation; 2, that royal customs officials should be established in New England as in the other colonies and, “in case of refusall in them to admitt such Officers, that the rest of the Plantations should be forbid to allowe them any liberty or intercourse of Trade”; 3, that the captains of the frigates of the navy should be instructed to seize and bring in offenders “that avoided to come and make their Entries here in England.”<sup>3</sup> But beyond preparing a new form of oath and taking steps to see that it was administered to the royal Governors,<sup>4</sup> nothing further was done, presumably because it was thought advisable to await the answer of Massachusetts to the royal letter and Randolph’s report on his mission.’<sup>5</sup>

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in the illegal importation of tobacco into Ireland which was giving the government so much trouble. Cal. Dom. 1676-1677, pp. 586, 587.

<sup>1</sup> C. C. 1675-1676, p. 377.

<sup>2</sup> A month after this, Edward Cranfield told the Lords of Trade that while he was in America “seventeen sail of New England ships with logwood were bound to France whence they bring the commodities of that place to sell in the West Indies.” C. C. 1675-1676, p. 398.

<sup>3</sup> C. O. 5/903, ff. 108-110; C. C. 1675-1676, pp. 379, 380. Cf. *ibid.* pp. 156, 381.

<sup>4</sup> C. O. 324/6, f. 53; No. Ca. Col. Rec. I, pp. 227, 228; P. C. Cal. I, pp. 663, 664; C. C. 1675-1676, pp. 385, 389, 390; Cal. Treas. Books, 1676-1679, pp. 170, 227.

<sup>5</sup> Beer, *The Old Colonial System*, Part I. vol. ii. pp. 262-4.

DIFFICULTY OF OBTAINING CONVICTIONS FROM COLONIAL JURIES  
FOR OFFENCES AGAINST THE NAVIGATION ACTS, AND  
CONSEQUENT ESTABLISHMENT OF IMPERIAL COURTS OF  
ADMIRALTY IN THE COLONIES

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'In general, the prosecuting officials greatly preferred to try seizures in the admiralty courts, as they were much more likely to find for the Crown. In cases of this nature,<sup>1</sup> they acted without juries, which in the common law courts were prone to be over-lenient toward illegal traders. Some of the jurymen might be engaged in the same devious pursuits. Moreover, the social conscience of the colonies was apt to omit smuggling from the list of the crimes. As a result, there was slowly developing the opinion that, in order to secure the effective enforcement of the colonial system, it would be necessary to establish admiralty courts in all the colonies and to give them jurisdiction over all breaches of the laws of trade and navigation. In 1680, Sir Henry Morgan<sup>2</sup> sent the English government the details of the trial by the Jamaica Admiralty Court of a vessel condemned for evading the local revenue laws. This verdict was complained of bitterly, and strenuous efforts were being made to have it reversed in England.<sup>3</sup> Morgan insisted that the trial had been conducted fairly, and added that without the Admiralty Court "the Acts of Navigation cannot be enforced, for it is hard to find unbiassed juries in the Plantations for such cases." As an example, he cited the case of a vessel that had come directly from Ireland to Jamaica with several casks of Irish soap, on account whereof it was seized. The case was tried in the common law court, and the jury brought in a verdict for the defendant on the evidence of one witness, who testified under oath that soap was a foodstuff upon which a man could live for a month and that, as it could be considered under the category of provisions, it could legally be imported directly from Ireland under the Staple Act of

<sup>1</sup> In 1680, in connection with a trial in the Nevis Admiralty Court for riot and murder at sea, the Governor, Sir William Stapleton, as Vice-Admiral, appointed the Judges, the indictment was made by a grand jury, and the prisoner was acquitted by a petty jury. C. O. 155/1, ff. 1-23; C. C. 1677-1680, pp. 570, 571.

<sup>2</sup> He was Judge of the Jamaica Admiralty Court, but when, at this time, as Deputy-Governor, he assumed charge of the government, he appointed John White to preside in his place. C. C. 1675-1676, pp. 342-344; C. C. 1681-1685, pp. 5, 6.

<sup>3</sup> On this case, see C. C. 1677-1680, pp. 343, 344, 487, 552, 567, 568, 581, 627, 631, 639; P. C. Cal. I, p. 864; Brit. Mus., Stowe MSS. 2724, ff. 198, 200; C. O. 138/3, f. 292.

1663.<sup>1</sup> When such fantastic fictions and tortuous evasions<sup>2</sup> could impress a jury, it is not surprising that the imperial officials placed greater reliance on the admiralty courts. It was the futility of attempting to secure a verdict from a jury in even the clearest of cases that ultimately led to the extension of the admiralty courts throughout all the colonies.

'The royal governors, in their position as vice-admirals, and the courts established in virtue of the authority thus vested in them were the direct agents of the English Admiralty in enforcing the laws of trade. In addition, as has been seen, the Admiralty was represented in the colonies by the officers of the men-of-war stationed there. Under the Navigation Act of 1660, it was their duty to seize unfree ships trading to the colonies.<sup>3</sup> Occasionally in the West Indies such seizures were made by them,<sup>4</sup> but no especial activity was displayed until the 'eighties, when the independent course of the New England traders threatened to make ineffective the carefully devised commercial code.'<sup>5</sup>

## NOTE F

CORRUPTION OF IMPERIAL CUSTOMS OFFICERS IN  
THE COLONIES

'Instead of exacting the full duties under the law of 1733, the officers of the customs frequently allowed the importation of foreign West Indian products on the payment of small sums of money which, it appears in some instances, they retained for their own uses. In 1763, in consequence of this abuse, such compositions for duties were absolutely forbidden. In addition, in some instances, the actual appointees to the positions in the customs service remained in England, and delegated their functions to

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<sup>1</sup> C. C. 1677-1680, p. 487.

<sup>2</sup> In the case of the *Ester*, which was tried in 1686 in the Nevis Admiralty Court for importing candles directly from Ireland, the defence claimed that there was "an adjudged Case in Jameco that Candles Should bee taken as provision and the Ship Bringing them acquitted from her Seizure." C. O. 1/57, 51; *ibid.* 1/58, 83 i.

<sup>3</sup> In 1668, the Council of Trade suggested, among other means for suppressing illegal trade, that directions be given to the ships of the navy and to merchant vessels to arrest any ship trading to the colonies contrary to law. After looking into the matter, the Privy Council (the King being present) declared, early in 1669, that "his Majestys Shippes Of Course" have such commissions and that, if any merchant ships should desire them, "upon giueing Security (with other usuall formalities)," the Duke of York was authorized to grant them. C. C. 1661-1668, no. 1884; *ibid.* 1669-1674, p. 6; P. C. Cal. I, p. 501.

<sup>4</sup> See, e.g., C. C. 1669-1674, p. 233.

<sup>5</sup> Beer, *The Old Colonial System*, Part I. vol. i. pp. 306-8.

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deputies. The Board of Trade had in vain striven against this vicious system. As the salaries of the customs officers were in themselves small, and as they were still further reduced by this practice, some of them yielded to the temptation of augmenting their income by corrupt means.<sup>1</sup> Thus a number of posts in the service had become sinecures. The Commissioners of the Customs reported that this was one reason for the small revenue arising in the colonies.<sup>2</sup>

## NOTE G

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[Once again the indebtedness of the readers of this inquiry should be expressed to Mr. G. L. Beer and his publishers for their courtesy in allowing Chapters V. and VI. of *British Colonial Policy, 1754-1765*, to be appended in full, together with the notes and references.]

SUPPLY OF PROVISIONS TO THE FRENCH DURING WAR FROM  
THE ENGLISH COLONIES

Chap. V. 'While events during the war were demonstrating the necessity of a more efficient system of defence, the trade of the colonies with the enemy directed attention to defects in the administration of the laws of trade and to the necessity of reforms therein. In accordance with the clearly defined and unequivocal principle of British law, all commercial intercourse with the enemy was absolutely prohibited in time of war.<sup>3</sup>

<sup>1</sup> On Sept. 17, 1763, Hutchinson wrote to Richard Jackson: "The real cause of the illicit trade in this province has been the indulgence of the officers of the customs, and we are told that the cause of their indulgence has been that they are quartered upon for more than their legal fees, and that without bribery and corruption they must starve." Quincy, *op. cit.* p. 430. Similarly, in 1764, James Otis wrote: "With regard to a few Dutch imports that have made such a noise, the truth is, very little has been or could be run, before the apparatus of guardships; for the officers of some ports did their duty, while others may have made a monopoly of smuggling, for a few of their friends, who probably paid them large contributions; for it has been observed, that a very small office in the customs in America has raised a man a fortune sooner than a Government. The truth is, the acts of trade have been too often evaded; but by whom? Not by the American merchants in general, but by some former custom-house officers, their friends and partizans." *The Rights of the British Colonists Asserted and Proved* (Boston, 1764), p. 58. In estimating the value of this statement, the controversial character of the pamphlet should be taken into account. Similarly, in 1764, an anonymous pamphleteer said that the Molasses Act had demoralized the custom-house officials, who "made a very lucrative job of shutting their eyes, or at least of opening them no farther than their own private interest required." *An Essay on the Trade of the Northern Colonies* (London, 1764), p. 20. See also Howard, *A Letter from a Gentleman at Halifax, Newport, 1765*.

<sup>2</sup> Beer, *British Colonial Policy, 1754-1765*, pp. 231-2.

<sup>3</sup> In 1799, in the case of the "Hoop," Sir William Scott, later Lord Stowell, said: "There exists such a general rule in the maritime jurisprudence



Naturally great difficulty has always been encountered in enforcing such a prohibition, especially when the belligerents are mutually dependent in their economic interests.<sup>1</sup>

'Throughout the eighteenth century, the British government had found it almost impossible to prevent the English colonies from trading with the temporary enemy in America. In the War of the Spanish Succession, a large trade was carried on with the French and Spanish colonies.<sup>2</sup> The trade with Spanish America was found so profitable to the Dutch allies that, owing to the pressure of the English mercantile classes, Great Britain was obliged to legalize it under certain limitations, though not waiving the principle involved.<sup>3</sup> In the War of the Austrian Succession, the commercial relations of the British colonies with the French West Indies<sup>4</sup> were of so extensive a nature, that Admiral Knowles declared they had resulted in the failure of English naval operations in the Caribbean Sea.<sup>5</sup>

'The difficulty of putting a stop to this intercourse arose, in great degree, from the economic relations existing between the French West Indies and the British continental colonies. The French islands were not self-sustaining; they devoted their energies to the production of sugar, coffee, indigo, and similar commodities, and imported a large proportion of their food-stuffs from the British colonies. Similarly, French Cape Breton depended to some extent also on the English colonies. At the same time, Ireland was a large exporter of provisions, especially of pork and beef, and it was with supplies purchased in this market that French fleets and armies were in part at least provisioned and the West Indies fed. Thus two great sources of

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of this country, by which all trading with the public enemy, unless with the permission of the sovereign, is interdicted." Robinson (Philadelphia, 1800) I, p. 167, and J. B. Scott, *Cases on International Law*, pp. 521, 522. See F. de Martens, *Traité de Droit International* (trans. by A. Léo) III, pp. 200, 201; T. A. Walker, *A Manual of Public International Law*, p. 121.

<sup>1</sup> Even in so bitter a struggle as the American Civil War, there was considerable trade between the belligerents. J. C. Schwab, *The Confederate States of America*, pp. 259-266; J. F. Rhodes, *History of United States*, III, pp. 549, 550; V, pp. 274, 275.

<sup>2</sup> *Cf.*, e.g., Instructions to the colonial governors, May 2, 1710, and Sunderland to Hunter, May 9, 1710. Am. and W.I. 336.

<sup>3</sup> Nottingham to the colonial governors, Feb. 23, 1704, and to Board of Trade, Feb. 24, 1704. Am. and W.I. 385. *Cf.* Am. and W.I. 1 *passim*, and *Ibid.* 6, no. 10. See also 6 Anne c. 37, § xvii.

<sup>4</sup> *Cf.* Am. and W.I. 2, no. 390; *Ibid.* 14, no. 85.

<sup>5</sup> At a hearing before the Board of Trade on Dec. 6, 1750, Admiral Knowles said: "Every Captain of his Squadron knows that these North American Vessels supplied the French with provisions otherwise he should certainly have taken Martinique." At one time, he said, there were at Hispaniola 42 British colonial vessels "with fictitious Flags of Truce." B. T. Journals 58. See also B. T. Plant. Gen. 16 P 18.

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provisions, on which France depended, were in British hands. At the outbreak of difficulties with France in 1754, the British government clearly recognized the immense advantage arising therefrom. Without Irish and American provisions, the French West Indies would suffer severely, and at the same time, France would be unable to refit her men-of-war in America and undertake privateering expeditions. It is interesting and important to see how Great Britain used this economic weapon against the French, and to what extent the colonies aided or hampered the policy adopted by the mother country.

‘Early in 1755, Dinwiddie wrote from Virginia to the Board of Trade that the French forces in Canada were chiefly supplied from Pennsylvania, New York, and the Northern colonies; that flour, beef, pork, and other provisions were taken to Cape Breton, where they were exchanged for French rum, sugar, and molasses. From Louisburg these provisions were sent to Quebec, and thence to the Ohio Valley. He suggested as a remedy for this “unjustifiable trade,” which supported the French Ohio expedition, that colonial provisions be put in the “enumerated list,” thus prohibiting their exportation to foreign parts, and also that Irish provisions be placed under the same regulations. Such steps, he pointed out, would paralyze the military schemes of the French and would prevent their fitting out a fleet.<sup>1</sup> At the meeting of the Board of Trade on April 9, 1755, this letter from Dinwiddie was read.<sup>2</sup> War with France had, however, not yet been declared, and consequently this trade could not be stopped on the principle of no trade with the enemy. On the other hand, the Board of Trade had always questioned the legality of any trade whatsoever between the English and French colonies in America. In 1717<sup>3</sup> it had sent a circular instruction to the colonial governors to prohibit all trade with the French settlements, as contrary to the Treaty of Neutrality of 1686 between France and England.<sup>4</sup> This treaty guaranteed to each power an exclusive trade with its colonies, and allowed the French and English Crowns respectively to seize ships of the other nation attempting to invade this monopoly. The Board of Trade’s interpretation of the treaty was clearly an untenable one, and although it had led to some difficulties, chiefly in the Bermudas,<sup>5</sup> it had not been insisted

<sup>1</sup> B. T. Va. 25 W 183. See also Dinwiddie to Secretary Robinson, Jan. 20, 1755. Am. and W.I. 68. This is confirmed by DeLancey, Aug. 9, 1755. B. T. N.Y. 32 Kk 62.

<sup>2</sup> B. T. Journals 63.

<sup>3</sup> B. T. Bermuda 32, p. 330. Cf. B. T. N.J. 13, p. 447.

<sup>4</sup> This regulation was incorporated in the voluminous instructions given to the governors. See, e.g., Instructions to Governor John Hart, 1721, § 94. B. T. Leeward Isles 53, p. 70.

<sup>5</sup> B. T. Bermuda 12 L 12, 13, 15 *et passim*; Am. and W.I. 49, nos. 179, 184, 273, 278; *Ibid.* vol. 620.

upon.<sup>1</sup> On receipt of Dinwiddie's despatch, the Lords of Trade again reverted to this interpretation of the treaty of 1686, but as they were in doubt, the opinion of William Murray,<sup>2</sup> the attorney-general, was asked. He correctly said, that "it was not the Intent of the Treaty to provide, nor could it be provided, that either of the Contracting Powers should seize the Ships or Goods of their own Subjects for contravening the said articles," and that consequently the trade in question was not illegal and could not be stopped except by some positive law.<sup>3</sup> Hence, until the outbreak of formal war with France, when the prohibition of all trade with the enemy would automatically take effect, or until Parliament had passed some law governing the matter, nothing could be done to prevent a patently injurious commerce, unless the colonies of their own accord legislated against it, or unless recourse were had to arbitrary military authority.

'Already toward the end of 1754, the naval and military commanders had been instructed to put a stop to "the illegal correspondence" between the French and English colonies, to prevent such "dangerous Practices," which supplied the French with provisions and warlike stores.<sup>4</sup> These instructions were enforced,<sup>5</sup> and were renewed the following year a few days after Murray had given his opinion that the trade was not illegal. Boscawen received orders to prevent this trade,<sup>6</sup> and the secretary of state wrote to Braddock to observe particularly this clause in his instructions, especially as regards the inhabitants of Pennsylvania and New York who were reported to be "most notoriously guilty of supplying the French with Provisions."<sup>7</sup> The illegality of these instructions is obvious, as no formal war existed and as no British law prohibited this trade. This step, however, aroused no opposition, since nearly all the colonies, largely on their own initiative, had themselves adopted measures to prevent the French from being supplied with provisions.

'A cessation of trade with the French unquestionably meant a great sacrifice on the part of the colonies, but on the other hand they recognized that France hemmed them in, and that

<sup>1</sup> In very many documents this trade is referred to as illegal, thus increasing the number of undifferentiated references to illegal trade, and further adding to the difficulty of estimating the extent of the violations of the laws of trade and navigation.

<sup>2</sup> Better known as Lord Mansfield.

<sup>3</sup> B. T. Journals 63, April 11, 1755.

<sup>4</sup> Commodore Keppel's Instructions, Nov. 26, 1754, and Art. 10 of Braddock's Instructions. Am. and W.I. 74.

<sup>5</sup> B. T. Nova Scotia 15 H 257 gives a detailed and interesting account of the seizure of a Boston vessel by a man-of-war for illicit trade with the French at Louisburg in 1754.

<sup>6</sup> Art. 8 of the secret instructions to Boscawen, April 16, 1755. Am. and W.I. 74.

<sup>7</sup> Sir Thomas Robinson to Braddock, April 16, 1755. *Ibid.*

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their expansion westward was contingent on the expulsion of this power from America. It was patent that while the sale of provisions to Canada enriched some individuals and the colonies as a whole, it tended in the end to their destruction. If on the one hand the sacrifice demanded was great, on the other still greater was the danger in strengthening to any degree whatsoever the position of France. Accordingly, the colonies, to a large extent on their own initiative, adopted measures to prevent the exportation of supplies and warlike stores to the French. In 1755, Dinwiddie laid an embargo on provisions in Virginia, solely as an example to the other colonies, no supplies being exported from that colony to the French.<sup>1</sup> Similarly, in the same year, Pennsylvania prohibited the sailing of any vessel with provisions unless bond had been given to carry them to a British port.<sup>2</sup> Massachusetts likewise passed several acts of this nature.<sup>3</sup> In 1755, New York interdicted the exportation of provisions, naval or warlike stores to Cape Breton or to any other French possession,<sup>4</sup> and Maryland passed a law forbidding all trade with the French and their allies.<sup>5</sup> These and other colonial laws, together with the embargo that was laid in Ireland, Shirley wrote, "have greatly distress'd the French at Louisbourg, & the Effects must be soon felt in all their Settlements in North America."<sup>6</sup>

'In the following year, on the declaration of war with France, all trade with the French colonies became by this very fact illegal, and ships engaged therein were, together with their cargoes, liable to seizure and confiscation. In June, 1756, full instructions to this effect were sent to the colonies.<sup>7</sup> As pointed out, a number of them had already passed laws forbidding this trade; these laws were continued and strengthened, and in general similar measures were adopted by the other colonies.<sup>8</sup> By a perpetual law, New

<sup>1</sup> B. T. Va. 25 W 170.<sup>2</sup> B. T. Proprieties 19 V 155.<sup>3</sup> Mass. Laws, 18 Geo. II, c. 3, c. 4, and c. 8 in B. T. Mass. 74. See also Mass. Acts and Resolves.<sup>4</sup> B. T. N.Y. 32 Kk 62.<sup>5</sup> Sharpe to Henry Fox, July 17, 1756. Am. and W.I. 70.<sup>6</sup> Shirley to Robinson, June 20, 1755. Am. and W.I. 68. This is confirmed by DeLancey. B. T. N.Y. 32 Kk 62. See also Shirley to Robinson, Aug. 15, 1755. Am. and W.I. 82.<sup>7</sup> B. T. Journals 64, May 20 and June 1, 1756; B. T. Plant. Gen. 15 O 146.<sup>8</sup> B. T. Journals 64, Aug. 5, 1756; Dobbs to Henry Fox, July 12, 1756. Am. and W.I. 70; Fitch to Henry Fox, Sept. 29, 1756. *Ibid.*; B. T. Journals 67, p. 86. On March 13, 1756, Henry Fox addressed a circular letter to the colonial governors stating that "the King would have you recommend it in the strongest manner to your Council and Assembly, to pass effectual Laws for prohibiting all Trade and Commerce with the French, and for preventing the Exportation of Provisions of all kinds to any of their Islands or Colonies." N.J. Col. Doc. VIII, Part II, pp. 211, 212; N.Y. Col. Doc. VII, p. 76.

Hampshire imposed a death penalty on all guilty of trading with the French.<sup>1</sup>

'The prohibition of all direct trade with the French could not, however, give Great Britain any marked advantage over the enemy, as provisions could still be legally shipped from Ireland and from the American colonies to the islands of the neutral powers in the West Indies, whence they could be transported to the French colonies. This trade centred in the Dutch commercial emporia, Curaçoa and St. Eustatius, and tended to neutralize the advantage derived from the control of the sources of supply in Ireland and America. Connecticut officially informed the secretary of state that it was probable the French would be supplied from Ireland by way of St. Eustatius.<sup>2</sup> The governor of New York, Sir Charles Hardy, gave more specific information regarding this trade,<sup>3</sup> and at the same time sought to induce the neighboring colonies to desist from engaging therein. He took measures to prevent the direct or indirect exportation of provisions and warlike stores from New York to the French, but he was unable to persuade the governors of the other colonies to adopt the same expedients. This, as he pointed out, was fatal to his purpose, for it was useless to enforce such a prohibition in New York if its neighbors were not placed under the same restrictions.<sup>4</sup> This vitally important question seriously engaged the attention of the British government.<sup>5</sup> On receipt of the information, the Board of Trade imparted it to the secretary of state.<sup>6</sup> The Lords of the Admiralty also wrote to Fox that preparations were being made to ship large quantities of supplies from Ireland to France in neutral ships in order to provision her navy and the French West Indies, and they suggested as a remedy that an embargo be laid in Ireland.<sup>7</sup> The military situation was a most critical one, and the government could not afford to abandon any advantage that Great Britain had in the

<sup>1</sup> B. T. New Hampshire 4 C 3. *Cf.* Wentworth to Fox, Sept. 2, 1756. Am. and W.I. 70 and B. T. New Hampshire 3 B 86.

<sup>2</sup> Fitch to Fox, Sept. 29, 1756. Am. and W.I. 70.

<sup>3</sup> B. T. Journals 64, Aug. 5, 1756.

<sup>4</sup> Hardy, Oct. 13, 1756. B. T. N.Y. 33 Ll 55. *Cf.* also Fox to Hardy, Aug. 14, 1756. Am. and W.I. 75. <sup>5</sup> B. T. N.Y. 33 Ll 55.

<sup>6</sup> Board of Trade to Henry Fox, Aug. 5, 1756. B. T. Plant. Gen. 15 O 143. On Aug. 14, 1756, Henry Fox wrote to Hardy that the shipping of provisions from Ireland to the Dutch West Indies, to which Hardy had called attention, would be looked into, and would be discouraged as much as was possible, but that it would be difficult to act in this particular, "and perhaps be found impracticable." Am. and W.I. 75.

<sup>7</sup> Admiralty to Henry Fox, Sept. 15, 1756: In order that this measure may be attended with as little inconvenience as is possible, "we humbly propose that the king will allow us to direct the commissioners for victualling to contract in Ireland for provisions for victualling the fleet in the Mediterranean." B. T. Plant. Gen. 15 O 143.

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struggle with France. The expressed intention of the government was to distress "the French, particularly in North America by a Want of Provisions";<sup>1</sup> in order to attain this end, the exportation of provisions from Ireland and the American colonies to the Dutch possessions in the West Indies had to be stopped. Accordingly, Fox instructed the Duke of Devonshire, then Lord-Lieutenant of Ireland, to lay an embargo on all ships and vessels bound with provisions from Ireland to neutral ports, and at the same time he forwarded to the Commissioners of Trade the king's commands that they should send similar instructions to the colonial governors in America.<sup>2</sup> On October 9, 1756, the Board of Trade sent a circular letter to the colonial governors instructing them to lay an embargo on all ships and vessels clearing with provisions from any place in the colonies, unless they were bound for some British colony. In that case bonds were to be demanded obligating these vessels to go to the destination indicated in their papers.<sup>3</sup> This action supplemented that of the commander-in-chief in America, Loudoun, who had already, on August 20, 1756, written to the colonial governors requiring them "in Consequence of his Majesty's Positive Orders" to prohibit the exportation of provisions, because the French might be supplied thereby, and because, in addition, the possibly ensuing scarcity on the continent might hamper British military operations.<sup>4</sup>

These instructions received the cordial support of a number of the colonies. Connecticut had, even before the receipt of the Board of Trade's letter, passed an act obliging all masters of vessels to give bond not to land provisions except in a British port, and had in addition laid an embargo on all shipping in that province.<sup>5</sup> The colonies were, however, not a unit in obeying these orders. Thus, despite the protest of the governor, the Pennsylvania legislature adhered to a bill "confining the Restraint & Prohibition to America only, leaving Vessels at Liberty to sail to any Neutral Ports in Europe."<sup>6</sup> Violations of the instructions were frequent, and as in addition the embargo in Ireland was not effective,<sup>7</sup> the French continued

<sup>1</sup> Henry Fox to the Board of Trade, Oct. 2, 1756. B. T. Plant. Gen. 15 O 144.

<sup>2</sup> B. T. Plant. Gen. 15 O 143; B. T. Journals 64, Oct. 1 and 8, 1756.

<sup>3</sup> B. T. Plant. Gen. 44, p. 123.

<sup>4</sup> Am. and W.I. 83.

<sup>5</sup> B. T. Prop. 20 W 2. For the attitude of Maryland, see B. T. Prop. 19 V 195; for New York, B. T. N.Y. 33 Ll 83, and B. T. Journals 65, Feb. 15, 1757; for New Hampshire, B. T. N.H. 3 B 86; for Massachusetts, Spencer Phips to Henry Fox, Dec. 21, 1756. Am. and W.I. 70.

<sup>6</sup> William Denny to Thomas Penn, April 8, 1757. Am. and W.I. 71. See also B. T. Prop. 20 W 3. The assembly claimed that a cessation of this trade would ruin Pennsylvania.

<sup>7</sup> On July 20, 1757, Admiral Frankland wrote to Governor Thomas of the Leeward Islands: "It is Notorious that in the last Cork Fleet Eight Vessels

to be supplied with food-stuffs. Thus, in the summer of 1757, there was a scarcity of provisions in the Leeward Islands, due on the one hand to the embargo in the continental colonies, and on the other to the fact that these colonies had sold their supplies to the French by way of St. Eustatius.<sup>1</sup> Hardy reported that a cargo of flour and provisions was shipped from Antigua to Curaçoa, the flour being concealed in claret casks.<sup>2</sup> Such violations were, however, more frequent in the continental colonies.<sup>3</sup> Rhode Island especially paid no respect to the orders from England.<sup>4</sup> Loudoun wrote to Pitt that the traders in this colony were "a lawless set of smugglers, who continually Supply the Enemy with what Provisions they want, and bring back their Goods in Barter for them."<sup>5</sup>

The Board of Trade had evidently anticipated that these instructions, even though issued expressly on the authority of the Crown, would not be sufficient. At their meeting on January 12, 1757, the Commissioners discussed this matter, and agreed on the necessity of an act of Parliament that should prohibit the exportation of all food-stuffs (except fish and rice) from the British colonies in America.<sup>6</sup> James Oswald, a member of the Board and also of Parliament, was instructed to bring this matter to the attention of the House of Commons.<sup>7</sup> The suggestion met with the approval of Parliament, which in 1757 passed an act prohibiting, during the war with France, the exportation of all provisions (except fish and roots, and rice under the already existing restrictions)<sup>8</sup> from the colonies to any place but Great Britain, Ireland, or some British colony.

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Laden with Provisions dropped the Convoy and went into that Island (St. Eustatius) for the French Market." B. T. Leeward Isles 32 Cc 6.

<sup>1</sup> *Ibid.*

<sup>2</sup> Sir Charles Hardy to Pitt, March 11, 1757. Am. and W.I. 71. See also B. T. Journals 65, April 20, 1757, and B. T. N.Y. 33 Ll 97.

<sup>3</sup> Hardy to Board of Trade, June 14, 1757. B. T. N.Y. 34 Mm 8. See also affidavits, *Ibid.* Mm 9-12.

<sup>4</sup> DeLancey to Board of Trade, June 3, 1757. *Ibid.* Mm 3.

<sup>5</sup> May 30, 1757. Am. and W.I. 85.

<sup>6</sup> The subject was naturally considered of utmost importance. Thus, on Feb. 4, 1757, the Board of Trade wrote to Charles Pinfold, the governor of Barbados: "The opportunity, which the Enemy has had in time of War in supplying themselves with Provisions by means of the Trade carried on in that Article from Ireland and our Colonys to the Dutch, and other neutral settlements, has long been the subject of much complaint and the source of great Mischief and Inconvenience, to remedy which a Bill is now under the Consideration of Parliament, which We hope will prove effectual." B. T. Barbados 55, p. 311. The various military commanders were carefully instructed to carry out this policy. See, e.g., § 5 of draft instructions to James Abercromby, Dec. 30, 1757. Am. and W.I. 75.

<sup>7</sup> B. T. Journals 65, Jan. 12, 1757.

<sup>8</sup> Rice could be exported directly only to Great Britain and her colonies and to ports in Europe south of Cape Finisterre.

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The penalties for violating this law were confiscation of the ship and cargo, heavy fines, and also possible imprisonment for the master of the ship.<sup>1</sup>

'In order to make this policy of distressing the French more effective, Parliament in the same session also prohibited for a limited time the exportation of grain<sup>2</sup> and its manufactured products from Great Britain and Ireland except to the British colonies.<sup>3</sup> This restraint on the English producer did not, however, imply the same economic sacrifice as did that laid on the colonies, because England was becoming a less and less important factor in the grain export trade. In fact, Parliament<sup>4</sup> at this very time sought even to encourage the importation of food-stuffs into Great Britain.

'In addition to the general rule forbidding all trade with the enemy and the act of Parliament of 1757 forbidding the exportation of food-stuffs from the colonies to foreign ports, temporary general embargoes were at various times laid in the colonies, partly with the object of preventing the French from being supplied, and partly for military purposes. In 1757 Loudoun laid such an embargo, which, however, had to be raised on account of the failure of the crops in Great Britain and Ireland, and the consequent need of provisions there.<sup>5</sup> The following year also, Abercromby, acting on instructions from Pitt,

<sup>1</sup> A fine of twenty shillings for every bushel of grain and every pound of beef, pork, and other victual, "which said penalties and forfeitures shall be recovered in the High court of admiralty, or any other chief court of civil or criminal jurisdiction, in such respective colonies or plantations." The master knowingly guilty could be imprisoned for three months. Bonds had to be given, in treble the value of the cargo, that it would be taken to its declared destination. 30 Geo. II, c. 9. As England was anxious to secure the neutrality of Spain during the war, on Aug. 9, 1757, an order in council was issued allowing the inhabitants of New York, during the Crown's pleasure, to export provisions to St. Augustine. B. T. Journals 66, Nov. 3, 1758.

<sup>2</sup> Corn, malt, meat, flour, bread, biscuit, and starch.

<sup>3</sup> 30 Geo. II, c. 1, continued to Dec. 24, 1758 by 31 Geo. II, c. 1.

<sup>4</sup> 30 Geo. II, c. 7, continued to Dec. 24, 1758 by 31 Geo. II, c. 1. See also 30 Geo. II, c. 14. The import duties on corn and flour were discontinued for a limited time; in addition the Navigation Act was relaxed, allowing corn to be imported in neutral ships. 30 Geo. II, c. 9, § xiv; B. T. Plant. Gen. 44, p. 130; B. T. Journals 65, March 2, 1757.

<sup>5</sup> Holderness to Loudoun and to colonial governors, both May 2, 1757. Am. and W.I. 75; N.J. Col. Doc. VIII, Part II, p. 248. In future such embargoes were not to apply to ships bound for Great Britain and Ireland. Eight ships of Snell & Co. had been held at New York and Philadelphia, and were not allowed to proceed to Ireland with their cargoes of wheat and flour. B. T. Plant. Gen. 44, p. 134 and *Ibid.* 15 O 153. This embargo was laid by Loudoun mainly with the object of obtaining sufficient transports to move his troops to Halifax. Sir Charles Hardy to John Cleveland, May 3, 1757. Adm. Sec. In-Letters, Bundle 481.



adopted the same expedient, preparatory to the Louisburg expedition.<sup>1</sup>

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‘As the act of Parliament of 1757 did not prohibit the exportation of beef and pork from Ireland to neutral ports, and as these were the chief food-stuffs in that kingdom, at various times also recourse was taken to embargoes there.’<sup>2</sup>

‘These various measures to prevent France from getting Irish and American provisions were by no means fully effective. In 1757, a number of vessels that had sailed from Ireland with provisions for the West Indies parted from the convoy, and took a large quantity of beef to St. Eustatius. This was immediately sent to the French in Martinique and Santo Domingo, and enabled them to fit out their vessels.’<sup>3</sup> In 1758 it was stated that no less than fifty to sixty thousand barrels of provisions had gone or were going from Ireland to this Dutch colony,<sup>4</sup> their ultimate destination being the French West Indies.<sup>5</sup>

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‘In the British colonies, both in the West Indies and on the continent, similar practices prevailed. The temptation to engage in this trade was very great. In time of peace the foreign West Indies furnished a large market for the surplus agricultural products of the British continental colonies, and also provided them with cheap molasses, which, when converted into rum, was a most important factor in the fisheries, in the slave trade, and in the fur trade with the Indians. In time of war this normally profitable trade became even more lucrative. The French West Indies suffered from a scarcity of provisions, and hence were willing to pay high prices for them.’<sup>6</sup> On the other hand, owing to the war, they had great difficulty in

<sup>1</sup> Pitt to Abercromby, Jan. 11, 1758. Am. and W.I. 76. Abercromby to Pitt, May 27, 1758. *Ibid.* 87. See also *Ibid.* 71 *passim*, and B. T. Mass. 76 li 47.

<sup>2</sup> Bedford Correspondence II, p. 369; Pitt Correspondence II, p. 79; Calendar Home Office Papers, 1760-1765, nos. 484, 493, 522, 526, 552, 559, 579.

<sup>3</sup> William Wood (Commissioners of Customs) to John Cleveland (Lords of Admiralty), Oct. 28, 1757. Adm. Sec. In-Letters, Bundle 3886. These were 14 ships with 20,000 barrels of beef.

<sup>4</sup> An intercepted letter from Waterford, Ireland, dated Jan. 26, 1758. B. T. Leeward Isles 32 Cc 24.

<sup>5</sup> Governor Thomas to Board of Trade, May 18, 1758. B. T. Leeward Isles 32 Cc 22. On Jan. 7, 1758, Governor Pinfold of Barbados wrote to the Board of Trade, that the French obtained provisions from Ireland and St. Eustatius. He also added: “I have good Intelligence that in Cork Numbers of Dutch Vessels lade with Beef & publicly declare it is to be carried to the West Indies, all of which is destined for the French Islands.” B. T. Barbados 35 Ee 16.

<sup>6</sup> From St. Eustatius, May 12, 1757, Samuel Wells wrote to his father, Francis Wells, at Boston, that “the voyages from America now to these Islands must be very profitable to those that voyage in (them.) at present every kind of Northern produce bear a great rate.” B. T. N.Y. 34 Mm 14.

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marketing their produce, such as sugar and molasses, and hence were forced to sell them at moderate prices.<sup>1</sup>

These conditions were the direct results of British sea power, which seriously interfered with the communications between the metropolis and the colony. France could not send provisions to the West Indies, and they, in turn, could not send their produce to the European markets. To a large extent, the colonies neutralized the advantages arising from British naval activity, both supplying the French colonies with the sorely needed provisions,<sup>2</sup> and also furnishing a market for their produce.

In the opening years of the war the colonies carried on this trade in two ways, either directly with the French, or indirectly with them through some neutral port in the West Indies.<sup>3</sup> The direct trade was carried on with the connivance of the French officials, as it furnished them with otherwise unobtainable supplies. The colonial ships engaged in it were not seized by the French cruisers and privateers, because in general, they had "Lycences from the French Governors who refused them to none that applied for them."<sup>4</sup> In addition, a large number of British colonial vessels engaged in this trade were protected by passes from the governors, authorizing them to go to the

<sup>1</sup> Extract from a letter dated Philadelphia, December, 1759, showing that the price of French sugar was very low, muscovado at 8s. to 10s. a hundred-weight, white at 15s. to 25s. a hundredweight. B. T. Plant. Gen. 16 P 20. Cf. also B. T. Jam. 37 Cc 19.

<sup>2</sup> A letter from the French West Indies in 1758, which had been taken in a French prize, clearly shows this: "Nous sommes tous les jours à la veille de manquer, sans le secours de nos Ennemis nous serons obligez de vivre comme vous nous l'annoncez avec ce que nous fournir la colonie. La Condition est dure, et l'on n'y résisteroit pas; nous savons bien qu'il est impossible au Commerce de France de nous secourir, tout est abandonné et La Cour ne pense pas à nous." B. T. Va. 26 X 41.

<sup>3</sup> On April 18, 1757, Governor William Popple of the Bermudas wrote to the Board of Trade, that a great many sloops built in the Bermudas were sold to the Dutch West Indies, and that the British register was transferred with the vessel. Thus the Dutch would be able to get provisions in the British colonies for the French. "Even now, thô Bond is given to Land Provisions at some English Settlement, the Dutch can go to Each English Settlement for once, give in Bond, and never return there again." B. T. Bermuda 19 O 51. An act of Parliament, 15 Geo. II, c. 31, § 1, was directed against such practices, yet there may have been some evasion of this law, with the result pointed out by Popple as probable.

<sup>4</sup> Sharpe to Pitt, Feb. 27, 1761. Am. and W.I. 73. Also in Sharpe Correspondence II, pp. 490, 491, and Pitt Correspondence II, p. 401. In 1759 Admiral Cotes pointed out that there was some danger in this trade, as a French frigate, newly arrived from Europe and unacquainted with its nature, had burnt nine North American vessels. The captain of this frigate was censured by the governor of Cape François for stopping the only channel by which they were regularly supplied with provisions. B. T. Plant. Gen. 16 P 20.

French colonies, ostensibly for the purpose of effecting an exchange of prisoners. Such vessels were popularly known as "flags of truce."

'The British West Indian colonies participated<sup>1</sup> in this trade, though naturally to a less extent than did the continental colonies, where the provisions were originally produced. In 1757 Barbados passed a law making it high treason to trade with the French,<sup>2</sup> and in the following year the Governor of the colony wrote to the Board of Trade, that every care and precaution had been taken to prevent the enemy from being supplied.<sup>3</sup> Despite these measures, Commodore Moore discovered, in 1759, that St. Vincent, one of the neutral islands, which had become completely French, was constantly supplied with provisions from Barbados, and that this trade helped to support the other French Islands.<sup>4</sup> A number of ships engaged in this trade were seized by the navy, and measures were also taken to punish those guilty of violating the law.<sup>5</sup> These vigorous steps seem to have been effective in checking such practices in the West Indian colonies.<sup>6</sup>

'In the continental colonies, this direct trade with the enemy was extensively carried on, especially by Rhode Island and Pennsylvania, though it was by no means confined to them. In many instances the colonial vessels were protected from seizure by commissions or other documents in the nature of passes issued by the governors, constituting them "flags of truce," for the ostensible purpose of effecting an exchange of prisoners. Although at the beginning these passes may have been used for the legitimate purpose of exchanging prisoners,<sup>7</sup> their issue soon became a crying evil. All pretence of legitimacy was abandoned, and, as in the previous war, colonial merchants eagerly sought to obtain from the governors these

<sup>1</sup> Wentworth, New Hampshire, Nov. 13, 1757, to Board of Trade. B. T. Plant. Gen. 49. Cf. B. T. Leeward Isles 32 Cc 6; B. T. N. Y. 34 Mm 13.

<sup>2</sup> B. T. Barbados 35 Ee 5, 6.

<sup>3</sup> *Ibid.* 35 Ee 16. Pinfold to Board of Trade, Jan. 7, 1758.

<sup>4</sup> Moore to Pitt, October, 1759. Am. and W. I. 100.

<sup>5</sup> Crump, Guadeloupe, Dec. 26, 1759, to Pitt. *Ibid.* Pinfold to Board of Trade, May 29, 1760. B. T. Barbados 36 Ff 1.

<sup>6</sup> The trade was also not unknown in Jamaica. In 1758 a "flag of truce" of that island, loaded up to the hatches, was seized by a privateer. B. T. Va. 26 X 41. See also the first memorial enclosed in Holmes to Pitt, Jan. 4, 1761, which states that Jamaica sent money to the enemy, while the Northern colonies sent provisions, and that the navy had entirely stopped this flag of truce trade from Jamaica. Col. Corr. Jam. II. Robert Melvill, the Lieutenant-Governor of Guadeloupe, wrote to Pitt, Dec. 15, 1760, that he had made two seizures in frustrating attempts to send provisions from that island to Martinique. Am. and W. I. 100.

<sup>7</sup> Cf. Hopkins, governor of Rhode Island, to Pitt, Dec. 20, 1760. Am. and W. I. 73.

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documents, under cover of which, with one or two French prisoners on board, they could with safety to themselves carry on a lucrative trade with the enemy. The Lieutenant-Governor of Virginia reported that he was offered four hundred guineas, if he "would license a Flag of Truce."<sup>1</sup> The most scandalous conditions prevailed in Pennsylvania, where Governor Denny openly sold such passes. When bringing these facts to Pitt's attention in 1759, Thomas Penn<sup>2</sup> said that the Delaware River at Philadelphia swarmed "with shallops unloading these illegal cargoes, brought at their return, and cheating the King of his duties,<sup>3</sup> besides carrying provisions and ready money to the Enemy." At first Denny sold these licenses in small numbers, and under the pretence of transporting French prisoners, though all such prisoners could have been embarked in one or two vessels at the most. At the outset also the governor received large sums for these passes, but as the number issued increased their value fell; and finally "he scrupled not to set his name to, & dispose of great numbers of blank flags of Truce, at the low price of twenty pounds sterling or under, some of which," as his successor, James Hamilton, wrote, were sold in 1759 "from hand to hand at advanced prices." In 1759 and 1760, "a very great part of the principal Merchants" of Philadelphia were engaged in this trade with the French West Indies.<sup>4</sup> In a number of the colonies, the governors refused to issue flags of truce. Fauquier in Virginia<sup>5</sup> and Wentworth in New Hampshire<sup>6</sup> did not issue any, and though Pownall in Massachusetts granted two, they were for the legitimate exchange of prisoners.<sup>7</sup> Connecticut also asserted its freedom from participation in such practices.<sup>8</sup> Rhode Island, on the other hand, was deeply implicated.

'In 1757 Rhode Island traded directly with the French in Santo Domingo,<sup>9</sup> and in the following year it was asserted that a regular trade in provisions was carried on from that colony to the French West Indies by means of "cartel ships," carrying

<sup>1</sup> Fauquier to Pitt, Oct. 28, 1760. Am. and W.I. 72. Cf. also Burnaby, Travels (ed. R. R. Wilson), p. 129 n.

<sup>2</sup> Sept. 12, 1759. Am. and W.I. 72.

<sup>3</sup> The duties were those imposed by the Molasses Act of 1733.

<sup>4</sup> Hamilton to Pitt, Nov. 1, 1760. Am. and W.I. 72. In a private letter from Philadelphia, December, 1759, the writer said of this trade, "there are among us some who think it illegal, while others of larger consciences practise it profitably." B. T. Plant. Gen. 16 P 20.

<sup>5</sup> Fauquier to Pitt, Oct. 28, 1760. Am. and W.I. 72. Cf. also B. T. Va. 27 Y 14.

<sup>6</sup> Wentworth to Pitt, Dec. 9, 1760. Am. and W.I. 73. Wentworth wrote that he probably could have made a good deal of money by issuing them.

<sup>7</sup> Bernard to Pitt, Nov. 8, 1760. Am. and W.I. 72.

<sup>8</sup> Thomas Fitch to Pitt, Nov. 26, 1760, and April 25, 1761. Am. and W.I. 73.

<sup>9</sup> B. T. N.Y. 34 Mm 14.

a few prisoners and protected by flags of truce.<sup>1</sup> Stephen Hopkins,<sup>2</sup> the colonial governor, in the course of a detailed exculpatory despatch to Pitt, said that in the first four years of the war thirty-two Rhode Island vessels had sailed to the French colonies for the purpose of exchanging prisoners. A colonial law authorized the governor to issue commissions for this purpose, but expressly forbade the exportation of provisions and warlike stores. Hopkins asserted that the colonial officials had not connived at any violations of this law, but he frankly admitted that these Rhode Island "flags of truce" took lumber and "Dry Goods of British Manufacture" to the French colonies, bringing back molasses and some sugar. Hopkins finally added: "It must be confessed 'tis highly probable, that some Vessels from this Colony as well as from others, have taken in Cargoes under Pretence of being bound to Jamaica," and have then sold them to the French in Santo Domingo. At the time, it was generally asserted that this direct trade with the enemy was openly carried on by Rhode Island.<sup>3</sup>

'In addition to this direct trade with the enemy, carried on under cover of flags of truce or with the connivance of the French authorities, the colonies, and Ireland as well, exported large quantities of provisions to the neutral ports in the West Indies. St. Eustatius was the chief centre of this trade and became an important source of supply for the French.<sup>4</sup>

'According to British law, provisions were in general deemed contraband of war, and especially so in a case like this, because they enabled the French to fit out their fleets and privateers, and because, in addition, they relieved settlements which were in continual danger of being forced to surrender through starvation.<sup>5</sup> Besides, in a number of instances, the Dutch vessels went to the French colonies under convoy of French men-of-war.

<sup>1</sup> Fauquier to Board of Trade, Sept. 23, 1758. B. T. Va. 26 X 41; B. T. Journals 66, Dec. 12, 1758.

<sup>2</sup> Dec. 20, 1760. Am. and W.I. 73.

<sup>3</sup> Sharpe to Pitt, Feb. 27, 1761. Am. and W.I. 73. On May 9, 1761, Francis Bernard wrote to the Board of Trade: "These practises will never be put an End to, till Rhode Island is reduced to the subjection of the British Empire; of which at present it is no more a part than the Bahama Islands were when they were inhabited by the Buccaneers." B. T. Mass. 78 Ll 16.

<sup>4</sup> The Dutch purchasers of these provisions in St. Eustatius furnished the colonial vessels with forged or fraudulent landing certificates, which were used to cancel the bonds given in the British colonies not to take their cargoes to a foreign port. B. T. N.Y. 34 Mm 14.

<sup>5</sup> In 1746 the British High Court of Admiralty declared that "provisions are and always have been esteemed contraband." F. T. Pratt, *Law of Contraband of War* (London, 1856), p. 93. Cf. also the judgment of Sir William Scott in the "*Jonge Margaretha*," 1799. C. Robinson, *Reports of Cases in the High Court of Admiralty* (Philadelphia, 1800), I, p. 163. Holland did not admit this definition of contraband, which was opposed to the treaties she had concluded with England. See Am. and W.I. 54, no. 124.

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Thus on November 30, 1758, Governor Thomas of the Leeward Islands wrote to the Board of Trade, that three fleets of Dutch vessels had in the last four months gone in this manner to Martinique, and he claimed, that without them the French would have been reduced to great distress and could not have fitted out their privateers.<sup>1</sup> Furthermore, in return for provisions, the Dutch took French produce, which they carried to Europe.<sup>2</sup>

'In normal times, France did not as a rule allow foreigners to trade with her colonies. During the war, French colonial trade was for the time being opened to Dutch vessels, owing to the supremacy of Great Britain at sea. This measure was not one "of *French* councils, but of *British* force." The British prize courts proceeded to condemn all such vessels engaged in this trade, contending that a neutral power could not engage in a trade which was opened to them only by "the pressure of war." This general doctrine is known as the "Rule of 1756."<sup>3</sup> Proceeding on these general principles, the British navy in the West Indies seized Dutch vessels carrying provisions to the French colonies, and also Dutch vessels taking produce away from them.<sup>4</sup> These seizures created a great deal of friction

<sup>1</sup> B. T. Leeward Islands 32 Cc 35. In an intercepted letter from the Governor of St. Eustatius to the Governor of Martinique, March 14, 1758, we read : "Je me flatte d'ailleurs, Messieurs, que dans un cas un peu douteux, vous voudrés bien avoir Egard à la façon dont je me suis porté à fournir des vivres, à Vos Colonies, dans le tems même où les Anglois insultoient le plus notre pavillon." *Ibid.* Cc 23. See Commodore Moore's despatch to Pitt from Guadeloupe, March 6, 1759, to the effect that, as the Dutch were very assiduous in assisting the enemy, he had sent ships to cruise off St. Eustatius to prevent provisions being sent thence to Guadeloupe, whose complete conquest had not yet been effected. Am. and W.I. 100.

<sup>2</sup> *Ibid.* Cc 6.

<sup>3</sup> This rule was based on legitimate considerations, which are admirably expounded in a judgment of the famous jurist, Sir William Scott, in the case of the "*Immanuel*," 1799 : "It cannot be contended to be a *right* of neutrals, to intrude into a commerce which had been uniformly shut against them and which is now forced open merely by the pressure of war ; for when the enemy, under an entire inability to supply his Colonies and to export their products, affects to open them to neutrals, it is not his will but his necessity that changes his system ; that change is the direct and unavoidable consequence of the compulsion of war, it is a measure not of *French* councils, but of *British* force." Robinson (Am. ed.) II, pp. 167, 168.

<sup>4</sup> The general contention of the British government was that, "in the present War between England and France, the Subjects of Holland have no Right to cover the Property of the Enemy of England, going to, or coming from the Colonies of that Enemy, directly, nor indirectly to do it, thro' the Medium of the Dutch Colonies ; nor to carry to the Colonies of France directly, nor indirectly, any Commodities, altho' Neutral Property, which have a Tendency to support the Enemy." James Marriott, *The Case of the Dutch Ships Considered* (3d ed. London, 1759), p. 1. Marriott was at a later date judge of the admiralty court. See also *The Annual Register for 1759* (5th ed. London, 1769), p. 5 ; *A Letter to the Dutch Merchants in England* (London, 1759),

between the English and the Dutch.<sup>1</sup> Their general effect, however, was to break up the Dutch trade with the French colonies, and with it the exportation of provisions from Ireland and the British colonies to Dutch ports. Being deprived of their Dutch market,<sup>2</sup> the continental colonies sought access to the French by other means, and in the years 1759 and 1760 there developed an important trade with Monte Cristi, a Spanish settlement in the island of Hispaniola or Santo Domingo.<sup>3</sup>

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Both France and Spain had colonies in this island. Monte Cristi is situated on its north shore in the Spanish part, contiguous to the French boundary. Prior to the war, this commercially insignificant place had been closed to foreigners, but subsequently it was made a free port,<sup>4</sup> for the purpose

pp. 4, 18 (this pamphlet is attributed to Marriott); *Authentic Memoirs of Chatham* (London, 1778), pp. 19, 20.

<sup>1</sup> To the frequent complaints of the Governor of St. Eustatius that the capture and condemnation of Dutch vessels bound with provisions to the French islands was contrary to the treaties subsisting between Great Britain and Holland, Governor Thomas of the Leeward Islands replied, that if the condemnations were deemed unjust, an appeal could be taken to his Majesty in Council. B. T. Leeward Islands 32 Oc 22. The documents regarding this matter were sent to Pitt by the Board of Trade, July 26, 1758. *Ibid.* 57, pp. 124, 125, 130. For the activity of the British fleet, see *ibid.* Oc 35. Curaçoa was less concerned in this trade than was St. Eustatius. Up to a short time before the end of the war, only seven vessels from Curaçoa had been condemned in Jamaica for trading with the French West Indies. Col. Corr. Jam. II, May 10, 1762. For the decisions on appeal in England in these cases, see Grenville Papers I, pp. 270, 283, 284, 296.

<sup>2</sup> On March 28, 1759, Lieutenant-Governor Henry Moore of Jamaica wrote to the Board of Trade that the squadron had put an end to the commerce between the French and the Dutch, and that this branch of trade was then taken up by the Northern colonies. B. T. Jam. 34 Z 43. The trade through the Dutch channel, however, did not cease entirely. See Bradley to Amherst, Dec. 5, 1760. Am. and W.I. 73 and 95.

<sup>3</sup> The first mention of this trade is in DeLancey's despatch to the Board of Trade, June 3, 1757. B. T. N.Y. 34 Mm 3. Nothing further was heard until two years later, when the Board of Trade said that its first information regarding this trade came from a despatch from the Lieutenant-Governor of Jamaica, March 28, 1759. B. T. Journals 67, p. 231. See also B. T. Plant. Gen. 44, p. 179; B. T. Jam. 34 Z 43. Colebrooke's report of Feb. 18, 1760, says that this trade had been carried on since the beginning of the war, but in no proportion to what it was in 1759 and 1760. B. T. Plant. Gen. 16 P 17.

<sup>4</sup> Shirley, in his despatch to the Board of Trade, March 29, 1760, says it was a new Spanish settlement. Am. and W.I. 454. The second memorial enclosed in Holmes to Pitt, Jan. 4, 1761, says: "There is here No City, No Town, No Port," only a few huts; the place has no trade of its own, and "the Newly established free Port of Monto Christi . . . exists no where, but in the airy Regions of Imagination." Col. Corr. Jam. II. It should, however, be noted that already in 1562 John Hawkins sailed "to Monte Christi another port on the North side of Hispaniola." Hakluyt X, p. 8.

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of facilitating the trade between the British and French colonies. Nothing was produced here that the English colonies wanted,<sup>1</sup> nor did the few Spaniards residing at the place afford a market for provisions. The exports from Monte Cristi were all French produce,<sup>2</sup> and its imports all went immediately to the adjoining French colony. The Spanish governor collected fees from the vessels, gave them clearances, and charged duties on the sugar and molasses exported.<sup>3</sup> But the trade was essentially a direct one with the French.<sup>4</sup> In many instances the French produce was not even landed in Spanish territory, but was transferred from small French boats directly to the British vessels in the harbor.<sup>5</sup> The products brought to Monte Cristi were provisions, warlike stores, British manufactures and money.<sup>6</sup> The commodities exported were chiefly sugar and molasses.<sup>7</sup>

‘This trade at Monte Cristi was carried on mainly by the New England and Middle colonies,<sup>8</sup> but it was by no means unknown

<sup>1</sup> The only Spanish produce that could be obtained here was tobacco and hides. Hinxman's report in Holmes to Pitt, May 31, 1761. Col. Corr. Jam. II.

<sup>2</sup> B. T. Jam. 34 Z 59.

<sup>3</sup> B. T. Bahamas 7 E 3; Hinxman's report in Holmes to Pitt, May 31 1761. Col. Corr. Jam. II.

<sup>4</sup> See Memorial of Edward Long, Dec. 3, 1760. Col. Corr. Jam. II. Long was Judge of the Vice-Admiralty Court of Jamaica, and is the author of the well-known history of that island.

<sup>5</sup> B. T. Jam. 34 Z 59. Cf. also second Memorial in Holmes to Pitt, Jan. 4, 1761, in Col. Corr. Jam. II, and Holmes to Pitt, May 31, 1761, *ibid.* Holmes's despatch to the admiralty regarding this subject was likewise sent to Pitt. Cal. Home Office Papers, 1760-1765, p. 4.

<sup>6</sup> B. T. Bahama 6 D 87, 7 E 1; B. T. Plant. Gen. 16 P 17. It was said that the colonies were drained of money by this trade, as a cargo of sugar was more valuable than a cargo of provisions. B. T. Plant. Gen. 16 P 20. The North American vessels also brought horses, lumber, and fish. B. T. Jam. 34 Z 59. The average annual value of the importations from the North American colonies into Jamaica during the five years 1758 to 1762 was £200,000 Jamaica currency. The exports from Jamaica to these colonies amounted to only £50,000 yearly, the balance being paid in money or in bills of exchange, which the continental colonies used to purchase French produce at Monte Cristi. B. T. Jam. 37 Ce 19. In 1761 £10,000 Jamaica currency was equivalent to £7141 sterling. *Ibid.* Bb 41.

<sup>7</sup> B. T. Jam. 34 Z 44 and 59.

<sup>8</sup> According to a list of ships spoken by H. M.'s sloop *Viper* in Monte Cristi harbor, Feb. 5, 1759, 28 of the 29 ships there, ranging from 30 to 150 tons in burden, belonged to the North American colonies, and had cleared from them. They belonged to the following colonies: New York, 7; Rhode Island, 8; Connecticut, 4; Massachusetts, 8; Virginia, 1; and Bermuda, 1. The Virginia ship had put in on account of stress of weather. B. T. Jam. 34 Z 44. The success of the trade attracted others. On Oct. 25, 1760, H.M.S. *Defiance* anchored at Monte Cristi and remained there eight or nine days. The commander reported that there were always fifty vessels in the harbor, and that every day some left and some arrived. These vessels belonged to England, Ireland, Gibraltar, and the colonies, and in addition, mention is



in Virginia<sup>1</sup> and in the West Indies.<sup>2</sup> In addition, British subjects in England, Scotland, and Ireland were implicated in it, though to a minor extent.<sup>3</sup> The trade assumed large proportions in 1759 and 1760. At times during these two years, over one hundred North American vessels were at this port.<sup>4</sup> In 1760 it was estimated that in that one year four to five hundred vessels had taken in cargoes of French sugar and molasses.<sup>5</sup> In order to facilitate the trade, North American subjects of the Crown resided at Monte Cristi.<sup>6</sup>

'In New York, where this trade to MonteCristi was extensively'<sup>7</sup>

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made of three vessels under the Danish flag. Second Memorial in Holmes to Pitt, Jan. 5, 1761. Col. Corr. Jam. II. The trial of a North American vessel engaged in this trade showed that Messrs. Greg and Cunningham of New York and Messrs. Hugh White and Co. of Dublin were heavily interested in it. Holmes to Pitt, no date but marked as received May 13, 1761. *Ibid.* Captain Hinxman, who had been sent by Holmes to investigate, reported that on his arrival at Monte Cristi he found in the port 42 British vessels and that 8 had arrived subsequent to his anchoring. Of these 50 vessels, 36 belonged to the North American colonies: Massachusetts, 15; Rhode Island, 10; New York, 9; Connecticut, 1; North Carolina, 1. The balance belonged to the West Indian colonies and to various places, such as London, 5; Edinburgh, 1; Ireland, 1; Gibraltar, 1. The colonial vessels brought provisions, the British manufactures; both took in return French products such as sugar and indigo. Holmes to Pitt, May 31, 1761. *Ibid.* For Danish ships carrying French colonial products to market, see Cal. Home Office Papers, 1760-1765, pp. 69, 77, 78.

<sup>1</sup> Fauquier to Pitt, Oct. 28, 1760. Am. and W.I. 72. Cf. B. T. Va. 27 Y 14 and 111. Maryland, on the other hand, seems to have obeyed the act of 1757. B. T. Prop. 21 X 8. Cf. *ibid.* 20 W 26 and 27.

<sup>2</sup> One Allen Popham of St. Kitts was extensively engaged in this trade of sending provisions from Ireland and New York to St. Eustatius, St. Croix, St. Thomas, and Hispaniola. Bradley to Amherst, Dec. 5, 1760. Am. and W.I. 73 and 95.

<sup>3</sup> Colebrooke's report of 1760 says: "Policies of Insurance have been opened publicly in London to cover their risque, and at such high praemiums as imply consciousness of great hazard attending illegal adventures." B. T. Plant. Gen. 16 P 17. See also Sharpe to Pitt, Feb. 27, 1761. Am. and W.I. 73. Colden to Pitt, Dec. 27, 1760. *Ibid.* Report of the New York Council, Dec. 24, 1760. *Ibid.* In 1761 a small quantity of merchandise was entered for export direct from London to Monte Cristi. Customs Records (in Public Record Office), Ledgers of Imports and Exports, vol. 61.

<sup>4</sup> Governor George Haldane of Jamaica to Board of Trade, June 9, 1759, with affidavits to the effect that at times 100 to 120 North American vessels were at Monte Cristi. B. T. Jam. 34 Z 59. In 1760 it was said that as many as a hundred such vessels had been seen at one time there. B. T. Plant. Gen. 16 P 17. Cf. also Shirley to B. T., March 29, 1760, in Am. and W.I. 454; B. T. Bahamas 6 D 87; B. T. Journals 68 p. 175.

<sup>5</sup> B. T. Bahamas 7 E 1 and 3. Admiral Cotes said that more than 200 vessels had taken cargoes from Monte Cristi in 1759. B. T. Plant. Gen. 16 P 20.

<sup>6</sup> B. T. Jam. 34 Z 59.

<sup>7</sup> George Spencer to Amherst, Dec. 17, 1760, with a list of 46 New York

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carried on, it monopolized much of the time of the Commander-in-Chief, as it interfered with the victualling of the forces.<sup>1</sup> The lieutenant-governor of this colony, James DeLancey, was very active in suppressing the illegal exportation of provisions. "Quantities of Flour," he wrote, "were clandestinely Exported to foreign Markets, particularly to Monti Christi, thence to Supply the French." Some of the offenders were discovered; whereupon Amherst wrote that this was "a secret Satisfaction" to him, and that he hoped they would be punished as they deserved. Despite DeLancey's efforts and the detection of some of those concerned "in this shamefull abuse," Amherst again received complaints of its being carried on to a very great extent; so much so that he feared that nothing but an embargo would put a stop to it. He was, however, opposed to such a step if it could possibly be avoided without making the army suffer from want of flour, and he urged the Governor to punish all delinquents most severely. While his efforts to do so were at least in part frustrated,<sup>2</sup> DeLancey's energetic action succeeded in checking the trade, though not in stopping it, and he was able to assure Amherst that at all events there would be in New York no scarcity of so essential an article as flour. DeLancey's fears as to the continuance of this trade were, however, justified. On his death in 1760, Cadwallader Colden, as president of the Council, became the acting governor. He frankly admitted that the New York merchants had been too generally concerned in this illicit intercourse, but added that the Philadelphia merchants were even more guilty.<sup>3</sup>

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vessels that had taken provisions to Monte Cristi and other foreign ports, and had returned to New York with French sugar which was entered on fictitious clearances. Augustus Bradley to Amherst, Dec. 18, 1760, with a similar list of 39 vessels. Am. and W.I. 95.

<sup>1</sup> See DeLancey to Amherst, Aug. 24, Oct. 22, Nov. 5, 1759; and Amherst to DeLancey, Oct. 2, 7, 29, 1759. Am. and W.I. 91 and 92. In New York, the fraudulent flag of truce trade was not practised, as neither Hardy nor DeLancey would countenance it.

<sup>2</sup> DeLancey to Amherst, Nov. 5, 1759: "My Proclamation against Heysham, I believe, gave some Check to the Exportation of Provisions; but De Peyster and Folliott have connections, the former with two of the Judges, and the latter in the Custom house." Therefore he does not think that they will be made examples of; they have prevailed upon the witnesses to absent themselves; and he fears that this trade will continue.

<sup>3</sup> Colden to Pitt, Oct. 27, 1760. Am. and W.I. 72. The method of carrying on this trade in New York was to ship provisions in large quantities to the New England governments, "for which the Merchants give bond;" as the act of Parliament directed. These bonds were in turn cancelled by landing certificates from New England. The provisions were then exported to the French, and French sugars were brought back to New England or to New Jersey, whence in turn they were imported into New York, with "cockets" to the effect that they had been legally imported. In addition, Colden said

'By these means British subjects, of whom an overwhelming majority lived in the North American colonies, supplied the French with provisions and afforded them a market for their produce,<sup>1</sup> thus to a great extent frustrating the policy of the mother country. In fact, according to Shirley, who had been transferred from Massachusetts to the Bahamas, provisions were more plentiful and cheaper in the French settlements than in the English West Indies, and in addition, the prices for French sugars rose violently on account of the broad market offered at Monte Cristi.<sup>2</sup> Not only did the enemy secure an otherwise unobtainable market for his produce, but in addition, the sugars purchased at Monte Cristi were shipped from the North American colonies to London and entered there as British sugars,<sup>3</sup> thus vitiating the preferential system which gave the products of the British West Indies a monopoly of the home market. Furthermore, as a result of this trade, the price of provisions rose rapidly in the North American colonies, especially

that he had no doubt that provisions were exported from places where there were no customs officers. See also Colden to Pitt, Nov. 11, 1760 (*Ibid.*), enclosing the custom-house accounts, illustrating the nature and method of this trade. This method implied great frauds in the customs service, which Colden laid at the door of the officers in New Jersey and New England. One Bradley sent him a copy of a letter from a firm in Norwalk, which had procured "numbers of fictitious clearances for Different Persons as Also their method & Price for doing it." Bradley to Amherst, Dec. 18, 1760. Am. and W.I. 95. In addition, Colden admitted that provisions were shipped from New York to the Spanish and Portuguese wine islands off Southern Europe and Africa. This, though illegal, he contended did no harm, as all provisions thus exported were purely for local consumption in these islands. Colden to Pitt, Dec. 27, 1760. Cf. also B. T. Va. 27 Y 14. New Jersey, whose foreign trade was unimportant, apparently did not engage directly in this trade, at least not to a marked degree. Boone to Pitt, Aug. 23, 1760. Am. and W.I. 72. <sup>1</sup> B. T. Jam. 34 Z 44.

<sup>2</sup> White sugar had risen from 18s. to 26s. a cwt., muscovado from 11s. to 17s. 6d. a cwt. Shirley to Board of Trade, Aug. 1, 1760. B. T. Bahamas 7 E 1. Governor Lyttelton said that on account of this trade provisions during the war were scarce and dear in Jamaica. B. T. Jam. 37 Cc 19. However, on Jan. 7, 1758, Governor Pinfold wrote to the Board of Trade that Barbados was plentifully supplied with provisions, the trade with the Northern colonies being kept open by the activity of the privateers. B. T. Barbados 35 Ee 16.

<sup>3</sup> These sugars were "entered as the produce of the island of Guardaloup," which had been captured in 1759. B. T. Plant. Gen. 16 P 17. French sugars were imported into New York under "the denomination of prize sugars & British Sugars from Guardaloup." Colden to Pitt, Nov. 11, 1760. Am. and W.I. 72. Shirley pointed out that in addition to the other advantages resulting from this trade, France derived a revenue from the export duties in Santo Domingo, while the duties that were imposed by the Act of 1733 on these products when imported into the English colonies were not paid. B. T. Bahamas 6 D 87. On June 13, 1760, the Board of Trade sent a copy of this despatch to Pitt. *Ibid.* 12, pp. 187-188.

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in New York,' so that at times it would have been cheaper to purchase in England the flour and bread needed for the troops employed in the colonies.<sup>1</sup>

'Of minor importance, but by no means insignificant, was another branch of this illegal trade: that carried on with the French in Florida and Louisiana. New York and Pennsylvania did not, apparently, engage in this commerce, which, to a great extent, centred in New England.<sup>2</sup> A small number of colonial sloops constantly traded with New Orleans.<sup>3</sup> In addition, some trade, especially in Indian goods, was carried on by means of the Spanish with the French to the west of Florida. South Carolina was somewhat involved therein, but the chief offender was Rhode Island.<sup>4</sup> According to William Bull, the lieutenant-governor of that colony, it was the Indian goods thus acquired that enabled the French to keep their promises to the Indians, which, in turn, tended to encourage the Cherokees to keep up their war with the English and almost brought the Creeks to an open rupture.<sup>5</sup>

'The military and naval commanders were naturally indignant at a trade which they considered "traiterous," and which interfered with the success of their operations. Toward the end of 1759 General Crump wrote to Pitt that the French islands subsisted entirely by this trade and by the prizes which they took, and that, during the last eight months, not a single vessel had arrived from Europe with provisions for them. If these practices were stopped, he added, it would facilitate any military designs on the colonies of the enemy.<sup>6</sup> Admiral Cotes called the trade iniquitous,<sup>7</sup> and Commodore Moore stigmatized those engaged

<sup>1</sup> B. T. Plant. Gen. 16 P 17. Cf. also correspondence of DeLancey and Amherst. Am. and W.I. 91 and 92.

<sup>2</sup> Colden to Pitt, Oct. 27, 1760. Am. and W.I. 72. Hamilton to Pitt, Nov. 1, 1760. *Ibid.*

<sup>3</sup> In 1761 a sloop was seized at Boston for trading at New Orleans. The examination of the crew of this vessel brought out the fact that in addition to this, two other colonial sloops, one from Rhode Island, the other from Jamaica, traded regularly at New Orleans. Bernard to Pitt, May 5, 1761. Am. and W.I. 73; B. T. Mass. 78 Ll 14 and 19.

<sup>4</sup> On May 29, 1760, Bull wrote to the Board of Trade that the French were enabled to take advantage of the rupture with the Cherokees by the plenty of Indian goods with which they had been supplied by the Northern colonies, especially by the Rhode Island traders, who, being interrupted in their traffic at Monte Cristi, "have found out a new, and more pernicious Channel for the Industry, by carrying Goods proper for Indians to Pensacola, or other parts, where the French at Louisiana can get them." B. T. So. Ca. 20 M 7.

<sup>5</sup> Bull to Pitt, Feb. 18, 1761. Am. and W.I. 73. With a view to obviating this result, Bull induced South Carolina to pass a temporary law regulating the exportation of goods needed for the Indian trade.

<sup>6</sup> Byam Crump, Guadeloupe, Dec. 26, 1759, to Pitt. Am. and W.I. 100.

<sup>7</sup> B. T. Plant. Gen. 16 P 20.

in it as "Traitors to their Country."<sup>1</sup> It was claimed by those in the best position to judge of such matters, that this trade enabled the French to equip privateers, which inflicted much suffering, and that it prevented the capture of the French West Indies.<sup>2</sup>

'Full reports were forwarded to Pitt, who characteristically expressed his sentiments in no uncertain terms. On August 23, 1760,<sup>3</sup> he addressed a circular despatch to the colonial governors, stating that he had received repeated and certain information "of an illegal and most pernicious Trade, carried on by the King's Subjects, in North America, and the West Indies, as well to the French Islands, as to the French Settlements" on the continent of America, by means of which the enemy is supplied with provisions and other necessities, in consequence of which France is "principally, if not alone, enabled to sustain, and protract, this long and expensive War." Pitt instructed the governors to make strict inquiries into "the State of this dangerous and ignominious Trade," to bring "all such heinous Offenders . . . to the most exemplary and condign Punishment," and in general to put a stop to "such flagitious Practices." Pitt was unquestionably indignant, and this feeling was intensified by the fact that, as a result of the victories of Hawke and Boscawen, French sea power had been utterly shattered. The French West Indies were absolutely helpless, and relief from France was impossible. Guadeloupe had already fallen into English hands, and Martinique, Dominica, and the other "neutral islands" would inevitably fall when wanted, unless aided directly or indirectly by the English colonies.

'The chief instrument used to break up this trade with the enemy was the royal navy.<sup>4</sup> Frequent seizures virtually put an end to the fraudulent flag of truce trade<sup>5</sup> and to the direct trade with the enemy.<sup>6</sup> The indirect intercourse by means of the

<sup>1</sup> Moore to Pitt, October, 1759. Am. and W.I. 100.

<sup>2</sup> B. T. Jam. 34 Z 43. Henry Moore, March 28, 1759.

<sup>3</sup> Am. and W.I. 78. On Nov. 1, 1760, Governor Hamilton of Pennsylvania wrote to Pitt that trading with the enemy must "from the very nature of War, be a very high offence." Am. and W.I. 72.

<sup>4</sup> In 1757, Sir Charles Hardy, who was both governor of New York and a Rear-Admiral, advised the employment of cruisers to "intercept any Smuggling Trade that might attempt going to the Neutral Islands" with provisions. Hardy to Pitt, April 10, 1757. Am. and W.I. 71. At that time he seized a Salem vessel returning from St. Eustatius, and took it to Halifax where it was condemned in the Admiralty Court. B. T. N.Y. 34 Mm 13.

<sup>5</sup> B. T. Va., 26 X 41; Second Memorial enclosed in Holmes to Pitt, Jan. 4, 1761. Col. Corr. Jam. II.

<sup>6</sup> Hamilton to Pitt, Nov. 1, 1760. Am. and W.I. 72. Sharpe to Pitt, Feb. 27, 1761. *Ibid.* 73. First Memorial enclosed in Holmes to Pitt, Jan. 4, 1761. Col. Corr. Jam. II. Bernard to Pitt, Nov. 8, 1760. Am. and W.I. 72.

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Dutch colonies was also checked by the condemnation of the Dutch vessels engaged in trading with the French colonies. This indirect trade was then diverted to Monte Cristi. As this was a Spanish port, some legal difficulties were encountered in seizing vessels trading there. It was practically impossible to condemn colonial vessels carrying provisions to a foreign port in violation of the act of 1757, because their papers were always in order and indicated as their destination some British port. Nor, according to a strict interpretation of the "Rule of 1756," could colonial vessels trading at a neutral port, such as Monte Cristi, be condemned.

'At the outset, in 1759, the navy proceeded to seize ships engaged in the Monte Cristi trade, but was deterred in this activity by the legal difficulties encountered in procuring their condemnation.<sup>1</sup> The Admiralty Court in England held that "British Subjects have no Undoubted right of Trading at Monte Christi, provided they carry on their Trade *Bonâ Fide* with the Spaniards only."<sup>2</sup> The Judge of the Vice-Admiralty court of Jamaica contended, however, that the trade was not *bona fide*, that the Spaniards produced no sugar, molasses or rum; that the trade was virtually a direct one with the French; and that it certainly violated the spirit of the law.<sup>3</sup> The naval authorities supported this view. On January 4, 1761, Rear-Admiral Charles Holmes,<sup>4</sup> the commander at the Jamaica station, wrote to Pitt, that on his arrival he had instructed the ships of his squadron to break up this trade, as well as that carried on by flags of truce, but that he now found that many doubts had arisen in England concerning the legality of seizing and condemning the ships coming from Monte Cristi. "Shall others," he asked Pitt, "the subjects of Great Britain, concerned in this Trade, and Swearing with Halters about their Necks, if they bear witness to the Truth and Declare, that they keep Correspondence with the Enemy and not only Nourish and Support his Subjects in their Wants, but cover and carry on their Trade in a most prosperous and Successful Manner; Compeat with, or be opposed and Overthrow, the Certain Knowledge of His Majesty's Squadron, that there is Neither Port nor Commerce belonging to Spain, at Monte Christi, that the Commerce is wholly French; and that the Spaniards are only the Porters of this Trade, not into a Port, but into an open Bay and bare Road-Stead?" Holmes added that he would obey whatever instructions he might receive, but he pointed out that "the Enemy Cannot be hurt here, if the Trade of Monte Christi, under any Colour or pretext whatever, be sustained as Legal"; that this trade was even worse than the flag of truce trade, for if British subjects

<sup>1</sup> B. T. Plant. Gen. 16 P 20; B. T. Jam. 34 Z 59 and 60.

<sup>2</sup> Edward Long, Dec. 3, 1760. Col. Corr. Jam. II.

<sup>3</sup> *Ibid.*

<sup>4</sup> Col. Corr. Jam. II.

were, by other means, forced to abandon it, the Dutch would take it up. He therefore hoped that his action in seizing the enemy's produce, wherever he could lay hold of it, would be approved. These arguments lead to the extension of the "Rule of 1756" to the Monte Cristi trade.<sup>1</sup>

'The West Indian Vice-Admiralty courts proceeded to condemn these vessels, and ultimately their action was upheld in England. The question of the legitimacy of such seizures once settled, great zeal was displayed in breaking up the trade. Toward the end of 1760, the governor of New Jersey informed Pitt that the activity of the cruisers in the West Indies and "the Kind of Civil War that has been waged by Privateers on these Traders belonging to different Provinces" had made this intercourse so hazardous that it cannot be pursued "so universally or successfully as formerly."<sup>2</sup> Early in 1761, Admiral Holmes was able to inform Pitt that he had broken up this trade.<sup>3</sup>

'His report was, however, too sanguine if taken literally. The navy seriously interfered with this trade and greatly diminished it, but at no time succeeded in entirely eradicating it. Many and tortuous were the methods employed to escape the vigilance of the men-of-war. Thus in 1761 vessels from Jamaica and the continental colonies used Spanish crews and sailed under the Spanish flag from Santo Domingo with French produce.<sup>4</sup> The navy was able to fathom this subterfuge,<sup>5</sup> but there were apparently other devices, which taken in connection with the fact that the navy was not ubiquitous, account for the continuance of this trade, though on a greatly diminished scale. At no subsequent time did it attain the large proportions that it had in

<sup>1</sup> Robinson (Am. ed.) II, pp. 121, 122.

<sup>2</sup> Boone to Pitt, Oct. 23, 1760. Am. and W.I. 72. Cf. Colden to Pitt, N.Y., Oct. 27, 1760, to effect that the navy had stopped this trade. *Ibid.*; Wentworth to Pitt, Dec. 9, 1760. *Ibid.*; Hopkins to Pitt, Dec. 20, 1760. *Ibid.*

<sup>3</sup> Col. Corr. Jam. II. Not dated but marked received May 13, 1761. Holmes added that an attempt was then made to carry French produce to market in Spanish ships from Spanish Hispaniola. The action of Holmes in seizing these Spanish vessels within gunshot of their ports was not approved by the British government, whose chief aim, after Pitt's resignation in 1761, was to keep peace with Spain. Cal. Home Office Papers, 1760-1765, nos. 397, 401. On March 29, 1760, Shirley wrote to the Board of Trade that recently the Vice-Admiralty Court of New Providence had condemned the cargoes of eight Spanish vessels belonging to Monte Cristi. These vessels had been captured by a privateer from the Bahamas, and were laden with French sugars and molasses. Am. and W.I. 454.

<sup>4</sup> Holmes to Pitt, June 16, 1761. Col. Corr. Jam. II. See also Cal. Home Office Papers, 1760-1765, pp. 60, 61, for some further details about the trade between the French and Spanish in Santo Domingo.

<sup>5</sup> The attack of Holmes on this trade led to considerable ill-feeling in Jamaica. See complaint against Holmes, Oct. 1, 1761. Col. Corr. Jam. II; and Holmes to Pitt, Oct. 27, 1761. *Ibid.* III. Cf. *passim* this volume.

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1759 and 1760. In 1762, after Spain had joined forces with France, there was, however, a revival on so extensive a scale, that even the normally imperturbable Commander-in-Chief was roused to indignation.

‘On May 10, 1762, Amherst wrote to the Earl of Egremont, that he had lately discovered a most iniquitous trade, by means of which the enemy was supplied with provisions and stores from many ports on the continent of America, the colonial vessels sailing directly to the French colonies; and that he had written to the governors and customs officials to put a stop “to this pernicious and destructive Trade.”<sup>1</sup> In his circular letter to the colonial governors,<sup>2</sup> Amherst stated that he had unquestionable proof that the enemy was being supplied with provisions from almost every port in the continental colonies, and that it was absolutely necessary to stop the trade as the army needed these supplies. In his letters to the Surveyors-General of the Customs,<sup>3</sup> Amherst showed that colonial vessels, which had cleared for British ports and had instead gone to the enemy’s colonies, were yet able to procure landing certificates from the alleged British port of destination. Such certificates, he pointed out, could be obtained only by the dishonest connivance of the custom-house officials. He enclosed a list of such vessels that had gone directly to the enemy’s ports, though clearing for Connecticut, Pennsylvania, and North Carolina.

‘To the colonies most implicated, Amherst wrote separately and in great detail. To Colden,<sup>4</sup> the lieutenant-governor of New York, he sent complete evidence of the colony’s participation in this trade, such as: a French passport found on board a New York vessel, allowing it to trade in French ports; an invoice of sugar shipped on a New York vessel in French Hispaniola, with an account of the cargo sold there by this ship. Among the number of instances mentioned by Amherst, one deserves citation. A New York vessel met a French ship that concealed its nationality by hoisting the British colors. Thereupon the colonial captain hid his French pass. On the New York vessel being seized, the true nationality of the capturing vessel was made evident, and the hidden passport was produced.<sup>5</sup>

<sup>1</sup> Am. and W.I. 97.

<sup>2</sup> Dated April 15, 1762. The governors of Nova Scotia and of Georgia were not included. Am. and W.I. 97. To put “a stop to such infamous practices, particularly at a time when there is the greatest demand for provisions to supply the King’s troops.” Col. Rec. of R.I. VI, pp. 311, 312.

<sup>3</sup> To Peter Randolph, Southern district, and John Temple, Northern district, dated April 24, 1762. Am. and W.I. 97.

<sup>4</sup> Amherst to Colden, April 16, and May 6, 1762. *Ibid.*

<sup>5</sup> Amherst’s letter of April 16, 1762, shows that families like the Livingtons and the De Peysters were engaged in this trade. This trade even extended to French Guiana. On Nov. 3, 1762, William Popple, Governor of the Bermudas, wrote to the Lords of the Admiralty regarding a New York



It is not surprising that Amherst wrote that "such Infamous practices at any time ought to be suppressed," but especially then, when Great Britain was at war with Spain as well as with France, and when "there is the greatest Reason imaginable, to think that without Supplys from this Continent the Enemy could not Subsist their Fleets in the West Indies." Colden fully admitted the truth of these charges, and said that the New York traders "consider nothing but their private profit," and that he would try to punish those engaged in this "most pernicious trade."<sup>1</sup>

'Connecticut and Rhode Island also called forth Amherst's indignation. On May 5, 1762, he wrote to Fitch, the governor of the former colony, complaining that this trade was still continued in Connecticut, and that vessels daily left the colony with provisions destined for the enemy.<sup>2</sup> Rhode Island also was actively engaged in this commerce, which centred in Newport.<sup>3</sup>

'In this entire correspondence, Amherst emphasized two points: first, that the trade helped the enemy; second, that it interfered with military operations by depriving the army of the necessary provisions. Despite the fact that the colonies produced a large surplus of food-stuffs, the troops had in part to be supplied from Europe.<sup>4</sup> This was to a great extent due to the trade in question, which enhanced to an abnormal degree

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vessel that had been seized for trading at Cayenne. Her outward cargo from New York was lumber, provisions, and horses, and the return cargo was cocoa. According to the custom-house papers from New York, her destination should have been Barbados. Adm. Sec. In-Letters 3819.

<sup>1</sup> B. T. N.Y. 36 Oo 67: Colden to B. T., May 11, 1762.

<sup>2</sup> Am. and W.I. 97.

<sup>3</sup> Amherst to Hopkins, May 7, 1762. Am. and W.I. 97, and Col. Rec. of R.I. VI, pp. 317, 318. For the seizure of a Rhode Island schooner, which had gone to Hispaniola with a cargo of flour, see Peter Blake to Egremont, Charleston, Nov. 27, 1762. Am. and W.I. 223.

<sup>4</sup> Even under normal conditions, it is probable that some provisions for the army would have been sent from Ireland. See Pitt Correspondence II, pp. 79, 109, 110. Cf. also Brit. Mus. Add. MSS. 35909 (Hardwicke Papers DLXI). In the opening years of the war, wheat was sent to England from the colonies, while in the closing years the movement was reversed. Among the imports of wheat and flour into England in the year from Michaelmas, 1756, to the same date 1757 are the following items: from New York, 7 quarters; from Pennsylvania, 1988 quarters; from Virginia and Maryland, 4827 quarters. For the subsequent year the corresponding figures are 688, 1275, and 2855. Among the exports of wheat from England in 1762 are the following items:—

To the West Indian colonies	7435 quarters
To Quebec	6602 quarters
To Newfoundland	720 quarters
To New York	1557 quarters

Treas. Acc. Rev. Misc. (England), Bundle 80.

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the cost of provisions in the colonies. In consequence of the ensuing scarcity, the Commander-in-Chief at this time was forced to order an embargo laid in the Middle and Northern colonies.<sup>1</sup> "I see no other way," he wrote, "of preventing those whose Sole Views seem to be to get Money without the least regard for the good of their Country from accomplishing their Designs."<sup>2</sup> Amherst took this step most reluctantly, as it punished both the innocent and the guilty;<sup>3</sup> consequently on receipt of advices that a quantity of provisions for the army was coming from England, he allowed the embargo to be raised, at the same time expressing the hope that no more attempts would be made to supply the enemy.<sup>4</sup> For his activity in breaking up this trade, Amherst was duly praised by the government.<sup>5</sup>

## NOTE H

REPLY OF THE BRITISH GOVERNMENT TO THE CLAIM ADVANCED  
BY THE GOVERNMENT OF THE UNITED STATES TO SOVE-  
REIGNTY OVER THE WHOLE CONTINENT OF AMERICA

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324.

On July 20, 1895 Mr. Olney addressed a despatch to the American Ambassador in London, in which were included the following observations:—

'That distance and 3,000 miles of intervening ocean make any permanent political union between an European and an American State unnatural and inexpedient will hardly be denied. . . .

'To-day the United States is practically Sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. . . .

<sup>1</sup> B. T. N.Y. 36 Oo 67. Amherst, May 5, 1762, to Fitch; May 7, 1762, to Hamilton; same date to Hopkins; etc. Am. and W.I. 97.

<sup>2</sup> Amherst to Governor Hamilton of Pennsylvania, May 7, 1762. *Ibid.*

<sup>3</sup> Governor Bernard of Massachusetts complained that the embargo entailed some suffering in that colony, as fish could not be sent to the British West Indies, nor provisions to Quebec and Nova Scotia. On May 6, 1762, Amherst in reply wrote to Bernard, that this illegal trade had been carried on in a most systematic and wholesale manner, and that its suppression was a matter of the highest importance. He would allow Bernard to relax the embargo as far as Nova Scotia was concerned provided that satisfactory bonds were given. *Ibid.*

<sup>4</sup> Amherst, June 13, 1762, to governors of Rhode Island, Connecticut, Pennsylvania, New Jersey, and Massachusetts. *Ibid.*

<sup>5</sup> On July 10, 1762, Egremont wrote to him, that 'the indefatigable Pains You have taken to discover & trace out all the Arts used to cover the most scandalous illicit Trade, carried on with the Enemy, have justly met' with high approbation. Am. and W.I. 77.

‘With the Powers of Europe permanently encamped on American soil, the ideal conditions we have thus far enjoyed cannot be expected to continue.’

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To these observations Lord Salisbury replied:—

‘The necessary meaning of these words is that the union between Gt. Britain and Canada; between Gt. Britain and Jamaica and Trinidad; between Gt. Britain and British Honduras or British Guiana are “inexpedient and unnatural.” President Monroe disclaims any such inference from his doctrine; but in this, as in other respects, Mr. Olney develops it. He lays down that the inexpedient and unnatural character of the union between a European and American State is so obvious that it “will hardly be denied.” Her Majesty’s Government are prepared emphatically to deny it on the behalf of both the British and American people who are subject to her Crown.’<sup>1</sup>

## NOTE I

### LINES UPON WHICH THE COLONISTS WERE DIVIDED IN THE WAR OF INDEPENDENCE

‘It is difficult or impossible to form any safe conjecture of the number of real loyalists in America, but it is certain that it was very considerable. John Adams, who would naturally be inclined to overrate the preponderance in favour of independence, declared at the end of the war his belief that a third part of the whole population, more than a third part of the principal persons in America, were throughout opposed to the Revolution. Massachusetts was of all the provinces the most revolutionary, but when General Gage evacuated Boston in 1776 he was accompanied by more than 1,000 loyalists of that town and of the neighbouring country. Two-thirds of the property of New York was supposed to belong to Tories, and except in the city there appears to have been no serious disaffection. In some of the Southern colonies loyalists probably formed half the population, and there was no colony in which they were not largely represented. . . .

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‘The older colonists were not of the stuff of which ardent soldiers are made. Among the poor, vagrant, adventurous immigrants who had lately poured in by thousands from Ireland and Scotland, there was indeed a keen military spirit, and it was these men who ultimately bore the chief part in the war of independence; but the older and more settled colonists were men of a very different type. Shrewd, prosperous, and well-educated farmers, industrious, money-loving, and eminently

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<sup>1</sup> *Correspondence respecting the Question of the Boundary of British Guiana* [C. 7926], pp. 16-18, 25.

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domestic, they were men who, if they were compelled to fight, would do so with courage and intelligence, but who cared little or nothing for military glory, and grudged every hour that separated them from their families and their farms. Such men were dragged very reluctantly into the struggle. The American Revolution, like most others, was the work of an energetic minority, who succeeded in committing an undecided and fluctuating majority to courses for which they had little love, and leading them step by step to a position from which it was impossible to recede.<sup>1</sup> To the last, however, we find vacillation, uncertainty, half-measures, and in large classes a great apparent apathy.<sup>2</sup>

Lecky's account is supported by the contemporary authority of Chief Justice Marshall.

'When it is recollected that the parties to the war had been members of the same empire; that no practical oppression had been generally experienced; but that the contest was a contest

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<sup>1</sup> One of the most remarkable documents relating to the state of opinion in America is the examination of Galloway (late Speaker of the House of Assembly in Pennsylvania) by a Committee of the House of Commons, June 16, 1779. As a loyalist, his mind was no doubt biassed, but he was a very able and honest man, and he had much more than common means of forming a correct judgment. He says: 'I do not believe, from the best knowledge I have of that time [the beginning of the rebellion], that one-fifth of the people had independence in view. . . . Many of those who have appeared in support of the present rebellion have by a variety of means been compelled. . . . I think I may venture to say that many more than four-fifths of the people would prefer an union with Great Britain upon constitutional principles to that of independence.' Galloway was asked the following question: 'That part of the rebel army that enlisted in the service of the Congress—were they chiefly composed of natives of America, or were the greatest part of them English, Scotch, and Irish?' Galloway answered: 'The names and places of their nativity being taken down, I can answer the question with precision. There were scarcely one-fourth natives of America—about one-half Irish—the other fourth were English and Scotch.' This last answer, however, must be qualified by a subsequent answer, that he judged of the country of the troops by the deserters who came over, to the number of between 2000 and 3000, at the time when Galloway was with Sir W. Howe at Philadelphia. I have no doubt that in the beginning of the war the proportion of pure Americans in the army was much larger, as it was chiefly recruited in New England, where the population was most unmixed. It is stated that more than a fourth part of the continental soldiers employed during the war were from Massachusetts. See Greene's *Historical View of the American Revolution*, p. 235. Galloway's very remarkable evidence was reprinted at Philadelphia in 1855. In his *Letters to a Nobleman on the Conduct of the War*, Galloway reiterates his assertion that 'three-fourths of the rebel army have been generally composed of English, Scotch, and Irish, while scarcely the small proportion of one-fourth are American, notwithstanding the severe and arbitrary laws to force them into the service.'

<sup>2</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 222, 224-5.

of principle, in which a claim was resisted in its commencement, on the mere ground of right, the pressure of which had not been felt; it will readily be supposed that some contrariety of opinion must have prevailed in every stage of the controversy. In its origin there were very few who took a decisive part in support of the claims of administration. The opposition was made by the most active, energetic, and intelligent; and being an opposition to taxation, the ultimate consequences of which were neither generally foreseen nor apprehended, was, of course, very popular; and those who would not then have been willing to encounter the difficulties and dangers afterwards experienced, either joined their countrymen, or suffered themselves to be borne along with the great mass, without enquiring what would be the future result of the present measures.

'As the contest assumed a more serious aspect, and became better understood, causes of irritation multiplied, and real injuries were sustained. The number of those who were determined, at every hazard, to maintain the principle asserted by America, greatly increased: but the party disaffected to this opposition, assumed a more distinct form, and in many parts of the union appeared in greater force than had been at first apprehended.

'So soon as fears were entertained that the pen might be laid aside, and an appeal be made to the sword, many were found unwilling to encounter the danger and the hazards of the contest; and to be more disposed to admit the supremacy of the British Parliament, and trust to their not abusing it, than to risk everything in order to maintain a principle not deemed by all of equal importance. These men, who were viewed with infinite contempt and detestation by those who believed that to submit to taxation; unaccompanied by representation, was the essence of slavery, were denominated Tories; and were exposed to the resentment of their neighbours who entertained the prevailing opinions.

'The nominal government not having been yet changed, and all concurring in professions of allegiance to the British crown, even after hostilities had commenced, no pains or penalties could be ordained by law for persons of this description; but they were held up as enemies to the liberties of America, after which their condition was worse than if subjected to prosecution, according to legal rules, for offences against established laws.'<sup>1</sup>

<sup>1</sup> Marshall's *Life of Washington*, vol. iii. pp. 48-50.

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THE COLONIESSee page  
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‘Whereas taxation by the Parliament of Great Britain for the purpose of raising a Revenue in His Majesty’s Colonies, Provinces and Plantations in North America has been found by Experience to occasion great uneasiness and disorders among His Majesty’s faithful subjects who may nevertheless be disposed to acknowledge the justice of contributing to the common Defence of the Empire provided such contribution should be raised under the authority of the General Court or General Assembly of each respective Colony, Province or Plantation. . . . May it please your Majesty that it be declared and enacted and it is hereby declared and enacted. . . . That from and after the passing of this Act the King and Parliament of Great Britain will not impose any Duty, Tax or Assessment whatever, payable in any of His Majesty’s Colonies, Provinces or Plantations in N. America or the West Indies; except only such duties as it may be expedient to impose for the Regulation of Commerce: the net produce of such duties to be always paid and applied to and for the use of the Colony, Province or Plantation in which the same shall be respectively levied in such manner as other duties collected by the authority of the Respective General Courts or General Assemblies of such Colonies etc. are ordinarily paid and applied.

‘II. And be it further enacted . . . That, from and after the passing of this act, so much of an act made in the seventh year of his present Majesty’s reign intituled “An act for granting certain duties in the British colonies and plantations in America” . . . as imposes a duty on tea imported from Great Britain into any Colony or Plantation in America, or has relations to the said duty, be, and the same is, hereby repealed.’<sup>1</sup>

<sup>1</sup> 18 Geo. III. c. 12 (1778). *Statutes at Large*, vol. xiii. p. 180.

## CHAPTER VII

### IRELAND AND THE BRITISH COMMONWEALTH

THE independence of the United States of America was formally established by the second Peace of Paris signed at Versailles in January 1783. In the last chapter the disruption of the Commonwealth has been represented as the inevitable consequence of a statesmanship in England which was unable to rise above the maxims of the commercial system. A variety of causes had long been disposing the minds of the colonists towards separation. From the circumstances which led to their settlement in America they were out of sympathy in various ways with the ruling classes in Britain. More earnest in their religion, cleaner in their personal morality, at once purer and more democratic in their politics and of a simpler and more wholesome manner of life, they were disposed to regard Britain much as Bunyan's pilgrim regarded the City of Destruction. On these and other contributory causes of the Revolution many volumes have been written, but for the purpose of the present inquiry it is needless to dwell upon them, unless it is contended that, had all these merely contributory causes been reversed, the result in the end might have been other than it was. Suppose that the religion, morals, and manners of American society had been those of the ruling classes at home, and had changed in sympathy with the changes that there took place, is it conceivable even

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The  
American  
Revolution  
the result  
of the  
English  
colonial  
system.

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so that the relations of the two peoples could have remained subject to the principles of the commercial system? The United States of America now contain more than 100,000,000 souls. Can we conceive this vast aggregate of human beings in the political situation that was occupied by the colonists of Virginia and New England? Can any sane mind imagine the foreign relations of North America conducted to-day by a government responsible only to the 45,000,000 inhabitants of the British Isles? If not, it is enough for an inquiry like this to examine the one cause which must, if it continued, have compelled the colonists to assume independence in external as well as internal affairs. It is not a very rash statement to say that, unless the people of Great Britain had managed to admit the Americans to a common responsibility for foreign affairs, the Americans must in any case have assumed that responsibility for themselves.

A similar system in Ireland produced similar results.

An attempt on the part of Scotland to do this very thing and the results which followed have been dealt with in Chapter V. A similar attempt on the part of Ireland was the immediate result of the American Revolution. The close connection of Irish with colonial affairs was no mere accident. The Irish problem hinges on the fact that Ireland was the earliest field of English and Scottish colonization.

## I

## THE IRISH COLONY AND ITS CLAIM TO INDEPENDENCE

The isolation of Ireland in early times.

The arm of the sea which divides Calais from Dover has enabled the English to develop a civilization of their own, differing in important respects from that of Europe. The strait which divides them from Ireland is three times as wide, with the result



that till recent times the people of England have been in closer contact with those of Western Europe than with those of Ireland. A glance at the map, however, is enough to show that the fortunes of the two islands are inseparably connected. A situation which thus enforces connection while discouraging intimacy is the key to the misfortunes which have overtaken the smaller and more secluded of the two peoples. From the outset of their common history this situation has operated to the prejudice of Ireland. Britain in a state of barbarism was a constant menace to the civilization established by the Romans in Gaul, and had to be brought under Roman rule. Agricola, who accomplished this work, saw that in time the *pax Romana* established in Britain would be threatened in turn from Ireland and advised, but never attempted, its conquest; nor did any of his successors. 'It was probably a misfortune that Ireland never passed, like the rest of Europe, under the subjection of the Romans, who bequeathed, wherever they ruled, the elements of Latin civilisation, and also those habits of national organisation in which they were pre-eminent.'<sup>1</sup> Had St. George's Channel been no wider than the Straits of Dover, it is at least more likely that Rome would have dissolved the tribal system in Ireland and given to its people a unity which they have never since been able to achieve. The Irish seem to have advanced to a state of culture as high as can be attained within the limits inexorably imposed by a tribal condition of society. In the chaos which followed the collapse of the Roman Empire the seclusion of the island served in some measure to protect its people from external foes. Under the protection of its monasteries Celtic literature and art attained their highest

78-85 A.D.

<sup>1</sup> Lecky, *History of Ireland in the Eighteenth Century*, vol. i. p. 2. In future this authority will be referred to as Lecky, *History of Ireland*.

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VIISurvival  
of the  
tribal  
system.Introduc-  
tion of  
feudalism  
by Richard  
Strong-  
bow.

development, and Irish missionaries carried Christianity to Northumberland and to the barbarians of Northern Europe. 'From Ireland,' in the words of St. Bernard, 'as from an overflowing stream, crowds of holy men descended upon foreign countries.'<sup>1</sup>

Nevertheless, outside the monasteries the tribal system remained undisturbed. Tribal custom, known as the Brehon law, was recorded with care and invested with sanctity. 'But there was no authority except public opinion to enforce payment of the fines determined by the brehon in cases submitted to him.'<sup>2</sup> By the twelfth century Ireland had attained no greater unity than existed in England before the time of Egbert.

In the twelfth century feudalism had been thoroughly established in England, but it was subject to a monarchy strong enough to hold the feudal chiefs in subjection to a common government and thus to impose upon the country the habit of obedience to a common government. The whole of England was parcelled out in fiefs, and the Crown had no more lands with which to reward military retainers who had inherited none for themselves. It was natural, therefore, for the kings to think of Ireland as a possible field for feudal colonization, and the internal weakness of the country was such as to invite the attempt. The opportunity occurred when Diarmait Machmuida, paramount chief of Leinster, being worsted in a tribal affray, sought the aid of Henry II., who authorized him to obtain the assistance of some of his more impecunious retainers. At Bristol Diarmait obtained the assistance of Richard de Claire, Earl of Pembroke, better known as Strongbow, a nobleman of great ability but broken fortunes. Strongbow asked for and obtained the hand of

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 242-3.

<sup>2</sup> Quiggin, *Ency. Brit.* vol. xiv. p. 770, 11th ed.

Diarmait's daughter Eva. Under feudal law this marriage would have made him heir to all the rights of Diarmait in Leinster; but under the tribal law of Ireland it gave him no rights to the communal land, which was the joint property of the tribe. Thus in the twelfth century appears the same collision of legal systems which led to the native wars in South Africa and in New Zealand, and complicates to this day the relations of the native with the colonist. Strongbow eventually landed in Ireland with a strong force and asserted what he supposed to be his rights. In accordance with the agreement Diarmait proceeded to grant the territory of Wexford as fiefs to Strongbow's allies, Robert Fitzstephen and Maurice Fitzgerald. Such grants, however, were utterly at variance with the principles of native law.

Henry II. was quick to perceive that Strongbow might become as dangerous to himself as his own ancestors had been to the Kings of France. In 1172 he crossed to Ireland with a strong force and exacted the homage not only of the invaders but of the Irish chiefs, who did not in the least appreciate the significance of their act. England owes much to the assertion by Henry II. of his authority over the Norman nobles; but in Ireland he was quite unable to control the adventurers, and contented himself with exercising a nominal authority over them through a Viceroy. The adventurers proceeded to carve out fiefs for themselves; but their conquests were largely limited to the open valleys, and the Celtic tribes remained in undisputed possession of the mountainous districts. The Norman conquerors were rapidly absorbed into Irish society, and became tribal chiefs rather than feudal nobles. The authority of the King was purely nominal, and did not avail to impose upon the nobles and their followers, as in England, a habit of obedience to a

Henry II.  
acknowledged as  
overlord,  
1172.

Nominal  
character  
of English  
rule.

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common government. The Irish people were neither incorporated like the Welsh as part of the British state, nor did they become a separate state. It was Edward I. who in England placed the final seal on the work begun by William the Conqueror and continued by Henry II., as a result of which the King's writ ran through every county of England, order was established, and every one, irrespective of rank or station, was accustomed to obey the national Government. The history of the British Empire would have been very different if he and his successors had been strong enough to accomplish the same task in Ireland. Wanting that strength, they fell back on the fatal expedient of maintaining an appearance of authority by keeping Ireland divided against itself. When Robert D'Ufford in 1298 was called upon by Edward to account for the state of disorder in Ireland, he explained that 'he thought it expedient to wink at one knave cutting off another,' whereat the King smiled and bade him return to Ireland.

The  
English  
Pale

The English had long traded with Ireland, with the consequence which invariably follows, when a more orderly community begins to trade with one more backward than itself, that they formed settlements on the coast, just as in the seventeenth century English trading posts were established on the coasts of India. It is perhaps more accurate to say that they utilized and developed Norse settlements already established at the most convenient harbours, those of Dublin, Wexford, Waterford, and Cork. The area or 'Pale' controlled by these colonies tended to include the surrounding country in proportion to the growth of English power. While England was weakened by the Wars of the Roses, the area began to contract, till, except in the case of Dublin, it vanished altogether. Even there the English Pale became so small and difficult to hold that it was protected by

a ditch. Within the Pale the English colonists ruled the Celtic inhabitants, and, as happens to some extent at the present day in South Africa, the colonists reserved their own law to themselves, while governing the natives under native law, an arrangement fruitful in inequalities. It meant, for instance, that while the murder of an Englishman was punished only with death, the murder of an Irishman involved nothing more serious than a fine. When the Irish inhabitants of the Pale offered to purchase the privilege of English law for a large sum, their petition was refused by the Government at the instance of the English prelates and nobles. The colonists, deeply concerned to maintain themselves as a separate race and caste, compelled the sons of labourers to follow their fathers' vocation, and excluded the natives from the patronage of the Church. While endeavouring, however, to prevent the natives from rising to their own level, the colonists were unable to avoid sinking to that of the Irish. Regulations such as those forbidding Englishmen to wear moustaches after the fashion of the natives reveal a consciousness of their own tendency to merge into the primitive society which surrounded them.

Fruitless  
attempts  
to  
maintain  
English  
ascend-  
ency.

‘Irish modes of life long continued to exercise an irresistible attraction over many of the colonists; but it was inevitable, in such a situation and at such a time, that those who resisted that attraction, and who formed the nucleus of the English power, should look upon the Irish as later colonists looked upon the Red Indians—as being, like wild beasts, beyond the pale of the moral law. Intermarriage with them was forbidden by stringent penalties, and many savage laws were made to maintain the distinction. “It was manifest,” says Sir John Davis, “that such as had the government of Ireland under the crown of England did intend to make a perpetual separation

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and enmity between the English and Irish, pretending, no doubt, that the English should, in the end, root out the Irish." A sentiment very common in the Pale was expressed by those martial monks who taught that it was no more sin to kill an Irishman than to kill a dog; and that, whenever, as often happened, they killed an Irishman, they would not on that account refrain from celebrating Mass even for a single day.<sup>1</sup>

The first  
Irish  
Parliament,  
c. 1295.

When in 1295 Edward I. summoned representatives of the English counties and towns to discuss with him the affairs of state and furnish him with the necessary supplies, he instructed his Viceroy to adopt the same procedure in Ireland. The colonists accordingly were summoned to send representatives to Dublin. As in England, the practice became established, and the representatives at Dublin rapidly acquired the power of making laws for themselves subject to the assent of the King's deputy, which was often granted with little or no reference to the King himself. In 1459, when England was distracted by the Wars of the Roses, they anticipated the action of the American colonies by denying that Ireland was subject to the laws and statutes of England. The Anglo-Irish colony adhered to the Yorkist faction, and it was there that Richard of York gathered strength to attack the House of Lancaster. It was there that the rebellion of Lambert Simnel was hatched in 1487, to end in the Battle of Stoke where, as Bacon remarks, 'the Irish did not fail in courage or fierceness but being almost naked men only armed with darts and spears it was rather an execution than a fight upon them.' Presently Perkin Warbeck, a Flemish apprentice to a silk merchant in Cork, was put forward by the Yorkist party as rightful heir to the throne and was recognized as King of Ireland by the colonial

Yorkist  
sympathies  
of Ireland,  
1459.

1451.

1487.

1492.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. p. 4.

Parliament. His claims were a source of anxiety to Henry VII. until, after attempting to invade England, he was at length captured and executed in 1499.

Henry VII. recognized that no ruler could secure his position in England until he had asserted his authority in Ireland, and determined to end the practice in accordance with which the deputy and his colonial Parliament made laws with little or no reference to the King himself. Accordingly he sent to Ireland as Lord Deputy, Sir Edward Poyning, who summoned a Parliament which, at his instance, enacted a law providing that in future no Parliament should be summoned without the consent of the King, and that no business should be laid before it when summoned which had not been considered and approved by the King in council. By a further act the existing statute law of England was applied to Ireland. Parliament, of course, represented no one but the English colonists, whose authority was confined to their fortified settlements on the coast. Beyond those limits the English settlers had merged into the Celtic society about them and had adopted the language and habits of the natives. The only authority recognized was that of the chiefs, including those of Norman descent, who were constantly at feud with one another. The colonists were in no position therefore to assert their independence of the English Government. Henry VII. could afford to despise their Parliament, and it was the Viceroy's independence, rather than theirs, which Poyning's Law was intended to restrict. Henceforward no law could be made in Ireland any more than in England without the approval of the King himself.

At the very moment when Poyning's Law was passed, Columbus was opening the route to America, and within three years Vasco da Gama had landed on the coast of India. 'The great impulse which the

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1499.

Poyning's  
Law, 1495.  
No  
legislation  
permitted  
in Ireland  
unless first  
approved  
by the  
English  
Privy  
Council.

Ireland a  
field for  
the  
colonizing  
spirit of  
the Tudor  
age.

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discovery of the New World and the religious changes of the sixteenth century had imparted to the intellect and character of Europe, was shown in England in an exuberance of many-sided activity equalled in no previous portion of her history. It produced among other consequences an extraordinary growth of the spirit of adventure, a distaste for routine, an extreme desire to discover new and rapid paths to wealth. This spirit showed itself in the immense development of maritime enterprise both in the form of discovery and in the form of piracy, and still more strongly in the passion for Irish land. The idea that it was possible to obtain, at a few hours' or days' journey from the English coasts, and at little or no cost, great tracts of fertile territory, and to amass in a few years gigantic fortunes, took hold upon the English mind with a fascination much like that which was exercised by the fables of the exhaustless riches of India in the days of Clive and of Hastings. The Government warmly encouraged it. They believed that the one effectual policy for making Ireland useful to England was, in the words of Sir John Davis, "to root out the Irish" from the soil, to confiscate the property of the septs, and plant the country systematically with English tenants. There were chronic disturbances between the English Government and the Irish chiefs, who were in reality almost independent sovereigns, and these were made the pretexts for gigantic confiscations; and as the hunger for land became more intense, and the number of English adventurers increased, other methods were employed. A race of discoverers were called into existence who fabricated stories of plots, who scrutinised the titles of Irish chiefs with all the severity of English law, and who, before suborned or intimidated juries, and on the ground of technical flaws, obtained confiscations. Many Irish proprietors were executed on the most



frivolous pretexts, and these methods of obtaining confiscations were so systematically and skilfully resorted to, that it soon became evident to chiefs and people that it was the settled policy of the English Government to deprive them of their land.'<sup>1</sup>

The darkest pages of history are those in which European adventurers are seen using the achievements of their civilization for the destruction of more primitive peoples. In Ireland it would seem as though fate had decreed that no irony should be wanting to complete the tragedy. Unlike the natives of Africa and America the Irish were Europeans, no less capable than any European race of responding to civilizing influences which came within their reach, or of evolving a civilization for themselves. They were just too near for the English to let them alone, and yet too far to be incorporated in the English state and share in the development of its civilization. Except for its religion, Irish society was a survival of Western Europe before its inclusion in the Roman Empire. The Irish had adopted Christianity before the Saxons themselves, and fidelity to their ancient creed was now to contribute to their ruin. The Reformation was closely associated in England with the cause of freedom, and when Elizabeth ascended the throne Catholicism was identified with the forces which were endeavouring to crush the English Commonwealth. The Church reformed on English lines was formally established in Ireland. But the Irish clung to Catholicism and were regarded as an outpost of continental autocracy. Religious opinion instead of restraining, encouraged and sanctioned the rapacity of the adventurers who descended on Ireland. 'The slaughter of Irishmen was looked upon as literally the slaughter of wild beasts. Not only the men, but even the women and children who fell into the hands

The bitterness engendered by difference in civilization enhanced by religious differences.

Rebellions and reprisals under Elizabeth.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 13-14.

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of the English, were deliberately and systematically butchered. Bands of soldiers traversed great tracts of country, slaying every living thing they met. The sword was not found sufficiently expeditious, but another method proved much more efficacious. Year after year, over a great part of Ireland, all means of human subsistence were destroyed, no quarter was given to prisoners who surrendered, and the whole population was skilfully and steadily starved to death. The pictures of the condition of Ireland at this time are as terrible as anything in human history. Thus Spenser, describing what he had seen in Munster, tells how, "out of every corner of the woods and glens, they came creeping forth upon their hands, for their legs could not bear them. They looked like anatomies of death; they spoke like ghosts crying out of their graves; they did eat the dead carrion, happy when they could find them; yea, and one another soon after, inasmuch as the very carcases they spared not to scrape out of their graves." . . . In Ulster the war was conducted in a similar spirit. . . . "No spectacle was more frequent in the ditches of towns, and especially in wasted countries, than to see multitudes of these poor people dead, with their mouths all coloured green by eating nettles, docks, and all things they could rend above ground." . . . In the neighbourhood of Newry, famine produced a new and appalling crime. It was discovered that some old women were accustomed, by lighting fires, to attract children, whom they murdered and devoured. At last, hunger and the sword accomplished their work . . . and the English ascendancy was supreme. . . . The English ascendancy brought with it two new and lasting consequences, the proscription of the Irish religion and the confiscation of the Irish soil.'<sup>1</sup>

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 5-6, 8-10.

Naturally the Irish stretched out their hands for assistance to Catholic countries, and Spain saw in Ireland a possible base for the invasion of England. 'A small expedition of Spaniards, with some English and Irish refugees, landed at Smerwicke in Kerry in 1579 to support the rebellion of Desmond, but they were besieged by the English, and after a hard struggle the survivors, numbering about 600, surrendered at discretion, and, except the officers who were reserved for ransom, were put to death, as well as some women who were found with them in the fort. A larger expedition of about 3,500 men landed in Kinsale in 1601, and was joined by the followers of O'Donnell and Tyrone, but it was surprised and defeated by the English. The Spaniards were allowed to retire to their own country, and O'Donnell and many other Irish accompanied them, and planted in a happier soil families which in more than one instance produced noble fruit. From this time it was noticed that Irish exiles were scattered widely over the Continent. Great numbers of the old nobility of the land fought and fell under foreign flags, and "found their graves in strange places and unhereditary churches."'<sup>1</sup>

CHAP.  
VIISpanish  
invasions.

1579.

As normally happens when Europeans invade the territories of a primitive people, the English ignored a semi-communal system of tenure which they did not understand. 'Under the clan system it may easily be conceived what passionate indignation must have been excited by the attempt to expel the old chiefs from their property, and to replace them by new owners who had no single object except to amass rapid fortunes, who had no single sympathy or interest in common with the natives. But this was not all. The Irish land customs of tanistry and gavelkind, as established by the Brehon laws, were still in full force

Extensive  
forfeitures  
of Irish  
chiefs.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 11-12.

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Substitu-  
tion of  
English  
for Irish  
system  
of land  
tenure.

among the Irish tribes. According to this system, the chief was not, like an English landlord, owner in fee of his land; he was elected, though only out of a single family, and the clan had a vested interest in the soil. The humblest clansman was a co-proprietor with his chief: he was subject, indeed, to many exactions in the form of tribute that were extremely burdensome and oppressive, but he could not be ejected, and he had large rights of inheritance of common land. His position was wholly different from, and in some respects it was superior to, that of an English tenant. In the confiscations these rights were completely disregarded. It was assumed, in spite of immemorial usage, that the land was the absolute, hereditary property of the chiefs, and that no compensation was due to their tenants; and in this manner the confiscation of territory became a burning grievance to the humblest clansman.<sup>1</sup> It was only in Connaught that the rights of the Irish received recognition. There Sir John Perrot, instead of ignoring their communal rights, converted them into individual tenure or divided them in accordance with the notions of English law. Elsewhere the natives were ruthlessly dispossessed, and those who survived were allowed to remain only in the condition of day labourers or ploughmen.

Immediately, however, they began to reassert their hold on the soil. It is the constant complaint among the European population of South Africa that great landowners find it more profitable to lease their land to natives than to whites, and so it was with the Irish. 'Accustomed to live in wretched poverty, they could pay larger rents than the English; their local knowledge gave them great advantages; they were unmolested by the numerous robbers who had begun to swarm in the woods; and after the lapse of

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 15-16.

ten years from the commencement of the Settlement, Spenser complained that the new proprietors, "instead of keeping out the Irish, do not only make the Irish their tenants in those lands and thrust out the English, but also some of them become mere Irish."<sup>1</sup> There is reason for believing that Spenser's own grandson was dispossessed of land under the Cromwellian settlement as a rebel Irishman.

The process already described was continued by James I., and henceforward Ireland was exploited by Scotland as well as England. By a decision of the King's Bench, the tribal rights recognized under the Brehon law were declared illegal, and Ulster was colonized by Scottish settlers. Native reserves were at first made, as in Connaught, but in neither case were they long respected. Thenceforward the process of expropriation was furthered by legal tricks to which the sanction of law was accorded by a corrupt judiciary. The law as well as the religion of the conquerors was thus perverted to the undoing of the Irish people.

The  
Scottish  
plantation  
of Ulster  
under  
James I.  
1609-12.

In England, meanwhile, the struggle of the Commonwealth with autocracy was fast approaching its crisis, and Ireland became a pawn in the game. Charles I. sent Wentworth as his Viceroy to Ireland to raise there revenues and forces which would relieve him from the necessity of applying to an English Parliament for supplies. With this end in view the natives were driven from the lands which Perrot had secured to them in Connaught. Wentworth was recalled, impeached by Parliament, and executed in 1641; but the Puritans, who were exhorting the King to enforce the laws against the Catholics, were little disposed to protect the Irish natives. Parliament, like the King, had parasites of its own who looked on Irish land as their lawful spoil. Sir William

Strafford  
in Ireland  
1633-9.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 18-19.

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The Irish  
rebellion,  
1641.

Ireland  
supports  
Charles I.  
in the  
Civil War,  
1642-9.

Parsons 'ardently desired and purposely stimulated rebellion in order to reap a new crop of confiscations.'<sup>1</sup>

'The Lords Justices, and crowds of hungry adventurers, saw with keen delight the opportunity of obtaining that general confiscation of Irish lands at which they had been so long, and so flagitiously aiming, and of carving out fortunes on a larger scale than in any previous period. Lord Castlehaven assures us it was a common saying among them that "the more were in the rebellion, the more lands should be forfeited to them."'<sup>2</sup> 'Week after week, as the attitude of the English Parliament became more hostile, the panic in Ireland spread and deepened.'<sup>3</sup> In October 1641 the rebellion began with a number of murders but with no general massacre. 'From the very beginning the English Parliament did the utmost in its power to give the contest the character of a war of extermination.'<sup>4</sup> It was the boast of Pym himself 'that the Parliament would not leave one priest in Ireland.'<sup>5</sup> In December the English House of Commons resolved that the Catholic religion should not be tolerated in Ireland, and 'thus at once extended the range of the rebellion and gave it the character of a war of religion.'<sup>6</sup>

In May 1642 the Catholic clergy declared the war against the English Parliament to be just and legal, seeing that it was waged not only for the defence of the Catholic religion but also for the maintenance of the royal prerogative. Not only was the aid of the Pope invoked but also that of the Kings of France and Spain. Many of the old English colonists, who remained Catholic and were cavaliers by sympathy, threw in their lot with the rebellion. In England the King and Parliament were actually at war, and

<sup>1</sup> Lecky, *History of Ireland*, vol. i. p. 42.

<sup>3</sup> *Ibid.* p. 42.

<sup>5</sup> *Ibid.* p. 40.

<sup>2</sup> *Ibid.* p. 70-1.

<sup>4</sup> *Ibid.* p. 82.

<sup>6</sup> *Ibid.* p. 82.

the Irish rebels, to legalize their position, produced a commission from Charles which may have been genuine. It suited the Puritan book to identify them with the Royalist cause, and in 1644 Charles with a gambler's desperation resolved to land Irish Catholics in Britain in order to crush the Puritan forces of Scotland and England. 'The Parliaments, both in England and Scotland, passed ordinances in 1644 that no quarter should be given to Irish who came to England to the King's aid. These ordinances were rigidly executed, and great numbers of Irish soldiers being taken prisoners in Scotland were deliberately butchered in the field or in the prisons. Irishmen taken at sea were tied back to back and thrown into the waves. In one day eighty women and children in Scotland were flung over a high bridge into the water, solely because they were the wives and children of Irish soldiers.

'If this was the spirit in which the war was conducted in Great Britain, it may easily be conceived how it was conducted in Ireland. In Leinster, where assuredly no massacre had been committed, the orders issued to the soldiers were not only "to kill and destroy rebels and their adherents and relievers, but to burn, waste, consume, and demolish all the places, towns, and houses where they had been relieved and harboured, with all the corn and hay therein; and also to kill and destroy all the men there inhabiting capable to bear arms." But, horrible as were these instructions, they but faintly foreshadowed the manner in which the war was actually conducted. I shall not attempt to go through the long catalogue of horrors that have been too often paraded; it is sufficient to say that the soldiers of Sir Charles Coote, of St. Leger, of Sir Frederick Hamilton, and of others, rivalled the worst crimes that were perpetrated in the days of Carew and of Mountjoy.

Massacres  
in Ireland.

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"The soldiers," says Carte, "in executing the orders of the justices, murdered all persons promiscuously, not sparing (as they themselves tell the Commissioners for Irish Affairs in the letter of June 7, 1642) the women, and sometimes not children." Whole villages as well as the houses of the gentry were remorselessly burnt even when not an enemy was seen. In Wicklow, in the words of Leland, Coote committed "such unprovoked, such ruthless and indiscriminate carnage in the town, as rivalled the utmost extravagance of the Northerners." The saying "Nits will make lice," which was constantly employed to justify the murder of Irish children, then came into use.<sup>1</sup>

Cromwell's  
conquest  
of Ireland,  
1649.

At length in 1649, Cromwell, having crushed the Royalists in England, turned his attention to the pacification of Ireland, where he quickly overpowered the Catholic forces. 'It should always be remembered to his honour that one of his first acts on going to Ireland was to prohibit the plunderings and other outrages the soldiers had been accustomed to practise, and that he established a severe discipline in his army. The sieges of Drogheda and Wexford, however, and the massacres that accompanied them, deserve to rank in horror with the most atrocious exploits of Tilly or Wallenstein, and they made the name of Cromwell eternally hated in Ireland. . . . Among the English soldiers who were present at this siege was the brother of Anthony Wood, the well-known historian of Oxford, and the vivid and most authentic glimpse of this episode of Puritan warfare which that accurate and painstaking writer has given us in his autobiography, furnishes the best commentary on the language of Cromwell. He relates how his brother "would tell them of the most terrible assaulting and storming of Tredagh, where he himself had been engaged. He told them that 3,000 at least,

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 83-5.



besides some women and children, were, after the assailants had taken part and afterwards all the town, put to the sword on September 11 and 12, 1649, at which time Sir Arthur Aston, the governor, had his brains beat out and his body backed to pieces. He told them that when they were to make their way up to the lofts and galleries of the church and up to the tower where the enemy had fled, each of the assailants would take up a child and use it as a buckler of defence when they ascended the steps, to keep themselves from being shot or brained. After they had killed all in the church, they went into the vaults underneath, where all the flower and choicest of the women and ladies had hid themselves. One of these, a most handsome virgin arraid in costly and gorgeous apparel, kneeled down to Thomas Wood with tears and prayers to save her life, and being stricken with a profound pitie, he took her under his arm, went with her out of the church with intentions to put her over the works to shift for herself, but a soldier perceiving his intentions he ran his sword through her . . . whereupon Mr. Wood, seeing her gasping, took away her money, jewels, etc., and flung her down over the works.””<sup>1</sup>

Of a population reckoned at 1,466,000 when the war began, over 616,000 or close on half are estimated to have perished before its close in 1652. Slave dealers were then let loose on the land, who shipped the destitute children of the dead to Barbadoes. The abuses became such that the Puritan Government which had for some time cordially supported the system made vain efforts to stop it. ‘All or almost all the land of the Irish in the three largest and richest provinces was confiscated, and divided among those adventurers who had lent money to the Parliament, and among the Puritan soldiers, whose

His  
wholesale  
confisca-  
tions.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 101-3.

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pay was greatly in arrear. The Irish who were considered least guilty were assigned land in Connaught, and that province, which rock and morass have doomed to a perpetual poverty, and which was at this time almost desolated by famine and by massacre, was assigned as the home of the Irish race. The confiscations were arranged under different categories; but they were of such a nature that scarcely any Catholic or even old Protestant landlord could escape. All persons who had taken part in the rebellion before November 10, 1642, all who had before that date assisted the rebels with food or in any other way, and also about one hundred specified persons, including Ormond, Bishop Bramhall, and a great part of the aristocracy of Ireland, were condemned to death and to the absolute forfeiture of their estates. All other landowners who had at any period borne arms against the Parliament, either for the rebels or for the King, were to be deprived of their estates, but were promised land of a third of the value in Connaught. If, however, they had held a higher rank than major, they were to be banished from Ireland. Papists who during the whole of the long war had never borne arms against the Parliament, but who had not manifested a "constant good affection" towards it, were to be deprived of their estates, but were to receive two-thirds of the value in Connaught. Under this head were included all who lived quietly in their houses in quarters occupied by the rebels or by the King's troops, who had paid taxes to the rebels or to the King after his rupture with the Parliament, who had abstained from actively supporting the cause of the Parliament. Such a confiscation was practically universal.<sup>1</sup>

Cromwell, however, was far too great a statesman to believe that the Irish problem could be per-

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 105-6.

manently solved by mere ruthlessness, or even by the establishment of a military colony. He realized that, if Ireland as well as Scotland was ever to be incorporated in the Commonwealth, its people must share in the general government. Under his Protectorate Ireland, like Scotland, sent thirty members to the Parliament of Westminster. But, as in the case of Scotland, his work was undone at the Restoration, for no Irish members were summoned by Charles II. to the English Parliament. It is not too much to say that the history of the world would have been different had representatives of the Irish people continued to meet those of England in a common assembly.

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Irish members summoned to the Parliament at Westminster under the Protectorate, but not under the Restoration.

When Charles II. was restored to the throne, his Catholic supporters in Ireland naturally expected to regain their lands. But Charles dared not face the fury of the Cromwellian settlers. A period of the utmost confusion followed, in which the original owners got little or nothing. When, however, the Catholic James II. had been driven from England he landed in Ireland in 1689 and identified his cause with theirs. Once again the cause of reaction in England found in neglected Ireland its natural support. James summoned a Catholic Parliament, which hastened to revise the Cromwellian settlement and to restore the land to the Catholic party. Ireland now became a pawn in the long struggle between William of Orange and Louis XIV., who was supporting James. Beaten at the battle of the Boyne, James fled to France in 1690, and at the end of the following year the last of the Catholic forces surrendered at Limerick. A promise of religious liberty was included in the terms of surrender but never fulfilled.

1660.

James II.  
in Ireland,  
1689.

The  
Battle of  
the Boyne  
1690.

Though a stream of Protestant immigrants continued to flow for several decades from Scotland,

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Composition of  
Irish  
society—  
(a) the  
Irishry and  
old  
Englishry,  
Catholic ;

(b) the  
English of  
the Pale,  
Episco-  
palian ;

(c) the  
later  
settlers,  
Presby-  
terian.

it will be convenient to pause at this juncture to examine the composition of Irish society. By the sixteenth century the 'old Englishry,' as those were called who had settled beyond the coast towns, had been largely absorbed by the 'Irishry.' They intermarried with them, spoke Erse, and adopted their tribal customs. At the Reformation they adhered, together with the Irishry, to the Catholic religion.

Only the colonists who were segregated in the coast towns retained their English character and embraced the principles of the Reformation. For them was officially established a colonial Church modelled on the same lines as the reformed Church of England, an episcopal organization acknowledging the King as its head. The settlers who appropriated the land in the reign of Elizabeth belonged to the Church of England and coalesced with the sister Church in Ireland, which, as in England, appropriated such church buildings as survived the cataclysm of conquest.

A third element was introduced by the Scottish colonization of the North largely encouraged by James I. These settlers were mainly Presbyterian and violently anti-Catholic, but, from the point of view of the Established Church of Ireland, Dissenters.

Both these Protestant elements were strengthened by the successive tides of immigration which swept over Ireland till the earlier decades of the eighteenth century. The dissenting element was swelled by the Cromwellian settlers, many of whom, however, sold their titles owing to the insecurity of their position. These were largely purchased by Scottish settlers, who continued to stream into the North of Ireland till shortly after the union of Scotland with England. By the beginning of the eighteenth century the Irish population was thus divided into three sections. Three-quarters were Catholics, including some land-

owners, gentry, and descendants of the old Englishry. But the vast majority of the Catholics were peasants of mixed origin, in the lowest depth of ignorance and degradation. The remaining quarter of the population was divided between members of the Church of Ireland and Dissenters. The great majority of landowners and gentry adhered to the Established Church of Ireland. The bulk of the Dissenters were farmers and artisans, people of the same class as those who had colonized New England. Their religious organizations, unlike that of the Established Church, were active ones, and they constituted the most vigorous element in Irish society.

It was in truth their industry which now brought Ireland within the meshes of the old colonial system. The principles of that system, as explained in Chapter IV., were developed by James I. and Charles I. in fostering colonial projects which originated in the form of commercial undertakings. Ireland throughout their reigns was too distracted to develop a trade valuable enough to claim the attention of the English Government. Cromwell's settlers, however, the flower of the English farmers and artisans, quickly changed all this, and by the time of the Restoration the produce of Irish farms and looms had begun to reach the English markets. The Civil War had resulted in transferring the control of colonial relations from the Crown to Parliament. The principles, however, which underlay the commercial arrangements with the colonies remained the same, and were embodied in the Navigation Acts of the Long Parliament. Here, then, was a colonial policy ready-made, and, the moment the Irish colonists developed a trade of their own, the principles of that policy were applied to it in all their stringency. As with the colonies, the English Parliament abstained from drawing revenues from Irish taxation into the English Treasury. It

Trade and  
industry  
mainly in  
Presby-  
terian  
hands.

The  
colonial  
system  
applied  
to Irish  
trade.

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reserved in its own hands the sole responsibility for naval defence. That was a charge on English industry, and therefore the industries of Ireland as well as those of the American colonies and Scotland were strictly subordinated to what English industrialists regarded as their interests.

Strength  
of the  
commercial  
classes  
in the  
English  
Parlia-  
ment.

Adam  
Smith  
on their  
selfishness.

For more than a century the executive was largely controlled by a few noble families, but commercial interests were strongly represented in Parliament, and in all matters affecting trade their voice was considered as 'final.' 'Trade was the Empire,' and the classes responsible for trade were treated as the determining factor in the settlement of public policy. Politics were increasingly treated as though they were 'business writ large.' As Adam Smith pointed out, merchants and master-manufacturers, from the nature of their occupation, are as a class led to devote a closer attention to their own material interest than other classes of citizens. 'As during their whole lives they are engaged in plans and projects, they have frequently more acuteness of understanding than the greater part of country gentlemen. As their thoughts, however, are commonly exercised rather about the interest of their own particular branch of business, than about that of the society, their judgment, even when given with the greatest candour (which it has not been upon every occasion), is much more to be depended upon with regard to the former of those two objects, than with regard to the latter. Their superiority over the country gentleman is, not so much in their knowledge of the public interest, as in their having a better knowledge of their own interest than he has of his. It is by this superior knowledge of their own interest that they have frequently imposed upon his generosity, and persuaded him to give up both his own interest and that of the public, from a very simple but honest conviction, that their

interest, and not his, was the interest of the public. The interest of the dealers, however, in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. To widen the market, and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can only serve to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens. The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, on many occasions, both deceived and oppressed it.<sup>1</sup>

Their  
object to  
widen the  
market  
and narrow  
the com-  
petition.

<sup>1</sup> Smith, *The Wealth of Nations*, vol. i. pp. 351-2. With this passage it is instructive to compare Lecky's reflections on the attempts made by the commercial classes in England to frustrate Lord North's proposal in 1777 to mitigate the restrictions on Irish trade. 'Nothing indeed in the history of political imposture is more curious than the success with which, during the Anti-Corn Law agitation, the notion was disseminated that on questions of protection and free trade the manufacturing classes have been peculiarly liberal and enlightened, and the landed classes peculiarly selfish and ignorant. It is indeed true, that when in the present century the pressure of population on subsistence had made a change in the Corn Laws inevitable, the manufacturing classes placed themselves at the head of a free-trade movement from which they must necessarily have derived the chief benefit, while the entire risk and sacrifice were thrown upon others. But it is no less true that there is scarcely a manufacture in England which has not been defended in the spirit of the narrowest and most jealous monopoly, and the growing ascendancy of the commercial classes after the Revolution is nowhere more apparent than in the multiplied restrictions of the English Commercial Code.'—Lecky, *History of Ireland*, vol. ii. p. 179.

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The commercial system designed to foster trade in England as the sole source of Imperial revenue.

Ireland helpless to resist the system :

By the time that Irish industries had struggled into existence the commercial system was firmly established. The system, as already observed, was conceived to suit tropical colonies which yielded the raw materials which English soil could not produce. Its spirit was hostile to the development in the remoter parts of the Commonwealth of any industry which was capable of being conducted in England, on the plea that there and there only was it liable to contribute effectively to the charges of the common defence. Translated into policy, this plea meant that Parliament should discourage, so far as it could, the development of industries outside the area of taxation from which its revenues were drawn. Ireland, no less than Scotland and the New England colonies, was too like England to suit the system. Its soil and climate lent themselves to the same industries as England. But Ireland was in a far worse case than Scotland or the American colonies. In Scotland before the Union the Parliament of Westminster claimed no power to legislate. In the American colonies the power was limited not by law but by facts. In Ireland, however, where the Protestant minority depended for their lives and property on English support, the Parliament of Great Britain asserted its right to make laws and was also in a position to enforce them. The moment therefore that English landowners and manufacturers complained that Ireland was competing with their products in their own markets, the principles of the commercial system were brought into play. As the guests of Procrustes were fitted to his bed, so the industries of Ireland were fitted by the English Parliament to the commercial system. In 1665 and 1680 the importation into England from Ireland of all cattle, sheep, swine, beef, pork, bacon, mutton, butter, and cheese was absolutely forbidden. In



1663, 1670, and 1696 Ireland was excluded from trade with the colonies. In 1698 the Irish Parliament was constrained to forbid all exportation of wool from Ireland except to England, and to discourage woollen manufactures. In 1699 the English Parliament prohibited the exportation of manufactured woollens from Ireland. The Irish were to be encouraged to develop the linen trade, which was not, like the woollen trade, regarded as the staple of English industry, but the promises of England in this respect were imperfectly redeemed.

The Irish, however, did not, like the American colonies, refuse the burdens of military defence. The Protestant Parliament was always prepared to maintain a considerable army, partly in order to secure itself against the Catholic majority, and these troops were constantly used on the continents of Europe, Asia, and America. Ireland, however, was never taxed for naval defence, and the amount of taxation levied per head there was far lighter than in England. It was a significant result of the commercial system that Ireland was at once the least heavily taxed and the poorest and most unhappy country in Europe.<sup>1</sup>

though  
she also  
contrib-  
uted to  
military  
defence.

The effect of the commercial restrictions upon the Protestant colonists are best described in Lecky's own words. 'The manufacturers and the large class of energetic labourers who lived upon manufacturing industry were scattered far and wide. Some of them passed to England and Scotland. Great numbers found a home in Virginia and Pennsylvania, and they were the founders of the linen manufacture in New England. Others, again, went to strengthen the enemies of England. Lewis XIV. was in general bitterly intolerant to Protestants, but he warmly welcomed, encouraged, and protected in their worship,

Consequent  
decline of  
Irish in-  
dustries.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 175, 459.

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Protestant  
emigration  
during the  
eighteenth  
century.

Protestant manufacturers from Ireland who brought their industry to Rouen and other cities of France. Many others took refuge in the Protestant States of Germany, while Catholic manufacturers settled in the northern provinces of Spain and laid the foundation of an industry which was believed to be very detrimental to England.

‘The Protestant emigration, which began with the destruction of the woollen manufacture, continued during many years with unabated and even accelerating rapidity. At the time of the Revolution, when great portions of the country lay waste, and when the whole framework of society was shattered, much Irish land had been let on lease at very low rents to English, and especially to Scotch Protestants. About 1717 and 1718 these leases began to fall in. Rents were usually doubled, and often trebled. The smaller farms were generally put up to competition, and the Catholics, who were accustomed to live in the most squalid misery, and to forego all the comforts of life, very naturally outbid the Protestants. This fact, added to the total destruction of the main industries on which the Protestant population subsisted, to the disabilities to which the Nonconformists were subject on account of their religion, and to the growing tendency to throw land into pasture, produced a great social revolution, the effects of which have never been repaired. For nearly three-quarters of a century the drain of the energetic Protestant population continued, and their places, when occupied at all, were occupied by a Catholic cottier population, sunk in the lowest depths of ignorance and poverty. All the miserable scenes of wholesale ejections, of the disruption of family ties, of the forced exile of men who were passionately attached to their country, were enacted. Carteret, in 1728, vainly deplored the great evil that was thus inflicted on the English interest in Ireland,

and urged the Presbyterian ministers to employ their influence to abate it. Madden ten years later echoed the same complaint, and declared that at least one-third of those who went to the West Indies perished either on the journey or by diseases caught in the first weeks of landing. The famine of 1740 and 1741 gave an immense impulse to the movement, and it is said that for several years the Protestant emigrants from Ulster annually amounted to about 12,000. More than thirty years later, Arthur Young found the stream still flowing, and he mentioned that in 1773, 4,000 emigrants had sailed from Belfast alone. Many, ignorant and credulous, passed into the hands of designing agents, were inveigled into servitude, or shipped by false pretences, or even with violence, to the most pestilential climates. Many went to the West Indies, and many others to the American colonies. They went with hearts burning with indignation, and in the War of Independence they were almost to a man on the side of the insurgents. They supplied some of the best soldiers of Washington. The famous Pennsylvanian line was mainly Irish, and Montgomery, who, having distinguished himself highly at the capture of Quebec, became one of the earliest of the American commanders in the War of Independence, was a native of Donegal.<sup>1</sup>

Until the forces of resistance in Ireland were finally broken in the seventeenth century, disparity in civilization was the prime cause which embittered Anglo-Irish relations. The English despised the Irish, and the Irish hated the English as oppressors. No one deemed to belong to the subject race could count on obtaining mercy or even justice. Had Cromwell's Union endured, this condition would still have remained until the difference of civilization between the colonists and the older inhabitants had vanished.

Consequent  
resentment  
against  
England  
among all  
classes,  
irrespective  
of race or  
religion.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 245-8.

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When the Union was reversed, the only kind of government possible was one which depended on maintaining that difference and upon keeping Catholics and Protestants divided against each other. Under the commercial system the colonists were taught to hate the country of their origin no less than the natives themselves. The Irish problem ceased to be one merely of disparity in civilization, religion, or race. Professor Huxley believed that the Irish population since the plantation of Cromwell has contained as large a proportion of Teutonic blood as England itself, and Lecky endorses that opinion.<sup>1</sup> Wales was far more Celtic than Ireland. The fact that the descendants of the colonists, English as well as Scottish, Episcopalian as well as Nonconformist, rapidly developed a kind of hostility to England, proves that this antipathy sprang not from their race, but from the situation in which the inhabitants of Ireland were placed. 'Hostility to the English Government is so far from being peculiar to Celts, that it has long passed into a proverb that in this respect the descendants of English settlers have exceeded the natives, and there have been few national movements in Ireland at the head of which English names may not be found. Nor can anyone who follows Irish history wonder at the fact. "If," wrote an acute observer in the beginning of the eighteenth century, "we had a new sette [of officers] taken out of London that had noe knowledge or engagements in Ireland, yet in seven years they would carry a grudge in their hearts against the oppressions of England; and as their interest in Irish ground increased, soe would their aversion to the place they left. So it hath been these five hundred years; so it is with many of my acquaintance but lately come from England; and so it is likely to be till the interests be made one."'<sup>2</sup>

<sup>1</sup> Lecky, *History of Ireland*, vol. i. p. 400.

<sup>2</sup> *Ibid.* p. 401.

These words were written in 1702. In 1698 Molyneux had published his famous pamphlet urging that, unless the English Parliament were prepared to admit Irish representatives, the Irish Parliament should repudiate its jurisdiction. The English Parliament ordered his book to be burned by the public hangman. The Irish Parliament was less courageous than Molyneux, but realized clearly enough that the principles of the commercial system spelt ruin for Ireland unless its interests were identified with those of England. The project of a Scottish Union was in the air. Scotland was suffering from the exclusion of her goods from English colonies and the severe restrictions on her trade with England. England, on the other hand, earnestly desired to consolidate the connection between the two countries, which after the Revolution was in great danger. After a period of great tension England reluctantly agreed to share her commercial privileges, and Scotland to surrender her legislative independence. The Union was probably carried largely by corruption, and long remained unpopular in the smaller kingdom, but it bound the two countries indissolubly together, and was to a great extent the foundation of the subsequent prosperity of Scotland.

‘In 1703, four years before the Scotch Union was completed, both Houses of Parliament in Ireland concurred in a representation to the Queen in favour of a legislative Union between England and Ireland, and in 1707 the Irish House of Commons, while congratulating the Queen on the consummation of the Scotch measure, expressed a hope that God might put it into her heart to add greater strength and lustre to her crown by a yet more comprehensive union. . . . In the pliant, plastic condition to which Ireland was then reduced, a slight touch of sagacious statesmanship might have changed the whole course

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Molyneux's  
plea for  
legislative  
independ-  
ence,  
1698.

Example  
of the  
union of  
England  
and  
Scotland.

Resolution  
of the Irish  
Parlia-  
ment in  
favour of  
union,  
1707.

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VII

The  
proposal  
ignored by  
the com-  
mercial  
interests.

Adoption  
of a  
policy of  
repression  
against the  
Catholics.

of its future development. But in this, as in so many other periods of Irish history, the favourable moment was suffered to pass. The spirit of commercial monopoly triumphed. The petition of the Irish Parliament was treated with contempt, and a long period of commercial restrictions, and penal laws, and complete parliamentary servitude, ensued.<sup>1</sup>

Had Ireland been incorporated, the Catholics, as in Britain, would have been governed by a Protestant majority too strong to be frightened into serious tyranny. The greater part of this majority, being British, would not have had the same motive for oppression as the Protestant minority in Ireland. The commercial interests having forbidden the adoption of this policy, there was no alternative but to adhere to the old system of trusting to the Protestant minority to hold down the Catholic majority. The promise of religious freedom made at Limerick in 1691 was ignored. The English Parliament was not, in any case, prepared to extend to Catholics in Ireland privileges denied to them in England, and passed an Act to exclude them from the Irish Parliament. They were thus subjected to a minority in whose minds were fresh the memories of the Catholic Parliament which had resumed possession of the lands formerly seized and now regained by the Protestant colonists. The Irish Parliament refused to ratify the Treaty of Limerick, and contrary to its provisions further expropriations were enforced against the Catholics. Henceforward not more than one-eighth of the soil of Ireland remained in the hands of Catholic proprietors. The Dublin Parliament next proceeded to the enactment of measures designed not only to confirm the exclusion of Catholics from political power, but to render them for ever unfit for it. A series of laws were passed depriving Catholics

<sup>1</sup> Lecky, *History of Ireland*, vol. v. pp. 124-5.

of the right to vote, and excluding them from the corporations, from the magistracy, from the bar, from the bench, from the grand juries, from the vestries, and from the army and navy. They might not be sheriffs or solicitors, or even gamekeepers or constables. They were forbidden to possess any arms or a horse worth more than £5. No Catholic could be a guardian, and all wards in Chancery were brought up as Protestants. The land of a Catholic was divided amongst his Catholic children, but if an eldest son conformed to the Protestant religion, the father was reduced to the position of a tenant for life and the inheritance of the property secured to the Protestant son. Catholics could not hold leases for a longer period than 31 years. Foreign priests were banished and native priests required to register and remain in their own parishes. Successful informers under these penal laws were richly rewarded from the property of convicted Catholics.<sup>1</sup>

The most malignant of these measures were those designed to confine education to the Protestant colonists. At the root of the Irish question lay the disparity between them and the Catholic Irish, to remove which should have been the dearest concern of Government. The policy of the colonial oligarchy was to emphasize and perpetuate that difference, and education, except in Protestant schools, was practically denied to the Catholics. No Papist might be a schoolmaster or teach any child but his own. They were even forbidden to educate their children abroad. They were treated not as potential citizens but as public enemies and described as such. 'The Lords Justices, in 1715, urged upon the House of Commons such unanimity in their resolutions "as may once more put an end to all other distinctions

Educa-  
tional  
restrictions.

<sup>1</sup> Lecky, *History of Ireland*, vol. i. p. 146; also Richard Bagwell, *Ency. Brit.* vol. xiv. p. 779.

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in Ireland but that of Protestant and Papist." Lord Carteret, in a similar speech, said, "All the Protestants of the kingdom have but one common interest, and have too often fatally experienced that they have the same common enemy." As late as 1733 the Duke of Dorset called on the Parliament to secure "a firm union amongst all Protestants, who have one common interest and the same common enemy." The phrase "common enemy" was in the early part of the eighteenth century the habitual term by which the Irish Parliament described the great majority of the Irish people.<sup>1</sup> The absolute subjection of the Irish Catholics was throughout the eighteenth century a cardinal point in the creed of the dominant caste.

Injurious  
effect on  
Irish  
character.

The anti-Catholic laws had an effect on Irish character which is traceable to the present day. The majority were taught to regard law and government as essentially opposed to the religion which they revered. The penal laws, which closed to them all constitutional means of redress, forced them to look to violent remedies and made them experts in the practice of conspiracy. Political power was confined to the very small minority of the Irish population who practised the religion established by law, and whose ministers were supported out of tithes paid by the Catholic peasantry. Many of the incumbents never went near their parishes, and employed curates on miserable stipends. Their tithes, which were payable in kind, were farmed by agents whose interest it was to be merciless in collecting them. Such a Church was inoperative as a civilizing influence, and singularly calculated to endear Catholicism to the Irish peasants.

The system might have worked its own cure if the whole Protestant minority had been enlisted in

<sup>1</sup> Lecky, *History of Ireland*, vol. i. pp. 162-3, 166.



the task of government, for it would then have included the Scottish and Cromwellian settlers, who would have kept it in touch with the needs of the lower middle and labouring classes. These, however, were Dissenters in religion. In the reign of Charles II. the Test Acts had excluded Dissenters from political rights, and it was obviously difficult to maintain the exclusion in England unless it was extended to Ireland. In 1704 the English Privy Council tacked a test clause to one of the anti-Catholic measures of the Irish Parliament, which gladly accepted the amendment. In 1708 the Whig element, having returned to power in England, endeavoured to obtain a repeal of the test clause, but found both Houses of the Irish Parliament determined to maintain it. A second attempt in 1718 failed, but in 1719 an Act was carried which enabled Dissenters to practise their own forms of worship without violating the law. In 1733 a third attempt to repeal the Test Act, made by Walpole, was again frustrated by the Dublin Parliament. Till 1780 political rights were restricted to Protestants who were prepared to subscribe to the dogmas of the Established Church, and Parliament was controlled by a handful of landowners, as narrow, selfish, and irresponsible an oligarchy as the world has ever seen.

When, in the beginning of the eighteenth century, the English Government declined to incorporate Ireland, it was trusting to certain powers which were wanting in the case of Scotland. The primitive tenures of the Irish tribes had been ignored or set aside, and as conqueror of Ireland the Crown had, in accordance with the feudal conceptions of English law, asserted its title to the ultimate ownership of the land. The grants made to the colonists were subject to quit rents, and these, by the Act of Settlement passed by the English Parliament in the reign

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VIIDisabilities  
of the  
Protestant  
Dissenters.

1704.

1708.

1719.

1733.

Weakness  
of the  
Irish  
Parliament  
in the  
seventeenth  
century.

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of Charles II., together with excise customs dues and sundry licences, had been placed for ever at the disposal of the Crown. This hereditary revenue, as it was called, did not depend on periodic votes of the Dublin Parliament, and until it was exceeded the Crown was under no necessity of summoning a Parliament in Ireland. None was, in fact, summoned by Charles II. But in any case the existence of a separate legislature appeared to raise no constitutional difficulties, such as were experienced in the case of Scotland, because the English Parliament not only claimed but asserted the right to override it, and to legislate for Ireland. When the right was questioned in the reign of George I., it was affirmed by the English Parliament in a declaratory Act. Lastly, the English Government had in Ireland the same facilities as those which Walpole employed for the management of Parliament in England. Though Parliament, and Parliament only, could make the law, the executive was still controlled by the Crown. Such a system could only work in so far as the ministers of the Crown were able to control Parliament, which they did by appealing to the private interests of the members. It was an age when the supporters of Government in Parliament were freely rewarded with lucrative offices, pensions, and even doles from the secret service fund. The process was rendered easier by the fact that a large proportion of members held their seats, not as the representatives of constituencies, but as the nominees of a single elector. The corruption by which Walpole secured the support of Parliament for his measures was openly recognized and justified as necessary to the working of the constitution. In Ireland no more than thirty great borough holders controlled a working majority in the votes of the Dublin Parliament.<sup>1</sup>

<sup>1</sup> McDonnell Bodkin, *Grattan's Parliament Before and After*, p. 82.

The ministers of Queen Anne may well have flattered themselves that the Dublin Parliament, led by a triple cord, must always keep step with the English Parliament, and could never, like that of Scotland, threaten to upset the whole Commonwealth by pursuing an independent course. But, as happens with makeshifts when used as a means of evading principles, the strands of the cord parted one by one. The hereditary revenue failed to keep pace with the expenditure, so that the executive was forced to ask the Irish Parliament to vote new taxes. That Parliament indeed, whose proper function was to watch extravagance, deliberately created burdens on the revenue in order to compel the executive to have resort to them for fresh supplies.<sup>1</sup> But even when the Treasury was in funds, they could always bring matters to a standstill by refusing to vote expenditure. Their policy of crushing the spirit of the Catholics for the time being succeeded so well that the Irish Parliament so far forgot their fears as to question the legislative rights of the Parliament at Westminster. As any attempt to assert those rights could always be met by a refusal to vote supplies, the rights fell into disuse. The eighteenth century was not half gone before the British Government had found that its constitutional control of the Irish Parliament would last only on condition that it was not used. The one real hold they had was on the private interests of its members, who were paid to pass whatever measures were called for by the necessities of government. Rulers, forced by the defects of the system they administer to practise corruption in the public interest, seldom if ever resist the temptation to practise it in their own, and Irish patronage was habitually used for any kind of job which would not stand the criticism of the Parliament at West-

The growing independence of the Irish Parliament in the eighteenth century.

British control maintained only through the executive by patronage and corruption.

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 58.

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minster. Till 1767 the Lord-Lieutenancy itself was practically a magnificent sinecure, the head of the Irish executive contenting himself with a formal visit to Dublin once in two years. The real Irish executive was a small knot of men who could undertake to control a majority in Parliament in return for a substantial share of the patronage of the Crown. They nominated themselves or their relatives for appointment by the Viceroy to the chief offices of state. Appropriately called the Undertakers, they managed Ireland for England in their own interests upon principles which were in harmony with the notions of the whole contractual system. A letter of Dean Swift to the Viceroy in 1735 recommending some friend for preferment gives a glimpse of its working.

“He is a very honest gentleman and, what is more important, a near relation of the Grattans, who in your Grace’s absence are Governors of all Ireland and your vicegerents when you are here, as I have often told you. They consist of an alderman, whom you are to find Lord Mayor at Michaelmas next; of a doctor, who kills or cures half the city; of two parsons, my subjects as prebendaries, who rule the other half, and of a vagrant brother who governs the north. These Grattans will stickle to death for all their cousins to the five and fiftieth degree.”<sup>1</sup>

A  
standing  
army  
maintained  
by Ireland  
available  
for service  
abroad.

As noticed above, England had observed the spirit of the *pacte colonial* so far as never to have imposed on Ireland any charge in respect of the navy. The Government, however, had always to face in Britain a resolute opposition to any increase in the forces available for foreign service, which was due in part to the objection to standing armies which had arisen in the struggle with the Crown, but still more to the aversion of the people themselves from compulsory service abroad. Though Catholics were long excluded

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 15.

from the army, in no part of the King's dominions were recruits more easily raised than amongst the Protestant colonists in Ireland. The military tradition of the adventurers and soldiers from whom they sprang survived amongst them,<sup>1</sup> and the poverty of the country encouraged them to enlist. Catholics also, from the time of the Seven Years' War onwards, were recruited into the ranks. Golden reasons, moreover, could be found to persuade the Undertakers to procure from the Irish Parliament an army larger in proportion to its population than the English Parliament was willing to furnish. It is important to realise that the population of Britain was then little more than double that of Ireland. But while Britain in peace maintained a standing army of 17,000, Ireland maintained 12,000, of whom 8000 were available for foreign service.

Allusion has already been made to the difficulty experienced by the British Government at the close of the Seven Years' War in providing garrisons for the great extensions of territory for which they were now responsible. To America they turned for a contribution towards the cost of the garrison in that country. To Ireland they turned for a contribution of 3000 additional men, and embarked on a wrangle with the Irish Parliament, as fruitless and as irritating as such discussions always are when the subject matter is the apportionment of the cost of defence between two countries which have not clearly settled the principles upon which that cost ought to be determined. In this case the proposal to increase the Irish forces was difficult to harmonise with the principles of a system under which Ireland was supposed to forgo the rights of commercial intercourse with the colonies in consideration of the protection afforded her by Great Britain. She was now being

This arrangement a departure from the theory of the colonial system.

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 85.

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Townshend as  
resident  
Viceroy,  
1767-72.

asked to increase her forces for the protection of the very colonies with which she was forbidden to trade. Here, as with the American colonies, the theory that the union of two communities in one Empire can be based upon some supposed balance of reciprocal interests broke down the moment it was put to the test.

With each fresh difficulty in Ireland fresh charges had to be paid to the Undertakers for overcoming it, and in the epoch of retrenchment initiated by Grenville the British Government conceived that it would be cheaper to do the jobs for themselves. It was decided, therefore, that in future the Viceroy should reside, make his own appointments, and manage the Irish Parliament for himself; and Lord Townshend, brother of the author of the American tea duties, was sent over to initiate the new system in 1767. The Undertakers proved intractable and Townshend made his own arrangements for a parliamentary majority at a cost of £500,000.<sup>1</sup> The increase of the Irish army was carried by a vote of three to one. Townshend, however, had earned the undying hatred of the Undertakers. The Government, which could never bend till it broke, failed to support him, and in 1772 he left Ireland abhorred by the politicians, but beloved by the people.<sup>2</sup>

The evils  
of absentee  
landlord-  
ism.

Recent publications of Townshend's secret despatches and of the reports made to him by the agents whom he appointed to inquire into the condition of the rural population explain why the land-owning oligarchy and the mass of the people regarded him with such different feelings. The relations of landlord and tenant were very different from those which in England were inherited from the Middle Ages, when rents paid in kind had, perforce, to be enjoyed on the spot. Irish title had originated in an age when the

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 62.

<sup>2</sup> *Ibid.* p. 87.

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revenues of land could be liquidated and spent at a distance. Many of the adventurers who secured land in Ireland had as little interest in its inhabitants as the modern capitalist who invests in a tropical plantation. The tradition of absenteeism became rooted in Ireland. Large numbers of landowners seldom if ever visited their estates or came in touch with their tenants. Their rents were collected through successions of middlemen. In such a system there was no room for sympathy or mutual knowledge between the owners and cultivators of the soil. The natural results were seen when in 1761 a cattle plague in England and Europe raised immensely the value of Irish pasture. Estates were diverted from cultivation without regard for the interests of the cottiers, who were quickly displaced by a few thriving graziers. The commons, which afforded pasture to the cultivators' own cattle, were freely enclosed. Faced with starvation, the agricultural population formed themselves into lawless organizations, known as 'White-boys' from the fact that the armed parties who pervaded the country were in the habit of wearing shirts over their coats. Great parts of Ireland were held in terror by the movement. Nameless leaders issued proclamations over the signature of Captain Right, and exercised all the authority of a secret government. Their will was enforced by the houghing of cattle, by the burning of houses, by mutilation and even by occasional murders.

Conversion  
of arable  
land to  
pasturage.

Conse-  
quent  
outbreaks  
of the  
'White-  
boys' in  
the south,  
1761 ;

Ten years later Lord Donegal succeeded in communicating the movement to the Protestant colony in the North. When the leases of his vast estates in Antrim expired he transferred them for a premium of over £100,000 to a syndicate in Belfast, which proceeded to displace the existing population. A rebellion was organized under the name of the 'Steelboys,' which large bodies of soldiers were sent

and the  
'Steel-  
boys' in  
Antrim,  
1771.

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to suppress. In 1772 Captain Erskine, who was sent by Lord Townshend with the troops in the capacity of a political officer, reported as follows: "When the consequence of driving six or seven thousand manufacturing and labouring families out of Ireland comes to be felt I question whether the rectitude of those gentlemen's intentions will be held by the world as a sufficient excuse for the irreparable damage they are thereby doing. That examples should be made of the principal offenders in each county I suppose every one sees the necessity of; but should justice be strictly executed on each unhappy wretch who comes under the lash of the law, it will indeed effectually quiet the country, but at the same time render it desolate. And the more truth there is in the complaints of the levelling spirit of the inhabitants, the more it will have that effect, as such a spirit itself sufficiently prompts them to settle in America. It seems to me that the first thing to be considered in all insurrections is whether the complaints of the insurgents are well or ill founded. Should the causes of the present riots be looked into it will be found that few have had juster foundations, that the poor wretches have much to plead in their excuse, having had many hardships put upon them which the law may perhaps warrant but can by no means justify. . . . They complain of being driven out of their lands by monopolisers, when they offered as great a rent; of those monopolisers refusing to sublet to them but at such a rent as would make it impossible for them to subsist, and of a most exorbitant cess laid on each county by the Grand Jury which is avowedly turned into jobs for the advantage of private people. A few facts which all the country acknowledges the truth of will show how much foundation there is for these complaints. Lord Donegall, upon his leases falling in, wanted to



raise upwards of £100,000 by way of 'gorsham,' which the farmers, not being able to raise, two or three merchants in Belfast were preferred to them, though they offered more than the interest of that money besides the rent. By this stroke a whole countryside was driven from their habitations. What was to become of them? They must either go to America or take the lands at any rate that the Belfast merchants chose to let them." <sup>1</sup>

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Most of these thrifty and industrious colonists chose the former alternative, and the rising was suppressed with comparative ease. 'The complete subsidence of this formidable insurrection in the North forms a remarkable contrast to the persistence with which the Whiteboy disturbances in the South continued to smoulder during many generations. It is to be largely attributed to the great Protestant emigration which had long been taking place in Ulster. The way had been opened, and the ejected tenantry who formed the Steelboy bands and who escaped the sword and the gallows, fled by thousands to America. They were soon heard of again. In a few years the cloud of civil war which was already gathering over the colonies burst, and the ejected tenants of Lord Donegal formed a large part of the revolutionary armies which severed the New World from the British Crown.' <sup>2</sup>

Renewed  
emigration  
from the  
Protestant  
North.

This was in 1772 when the American controversy was approaching its crisis, and, as Chatham had said, 'the North of Ireland was American to a man.' Every circumstance past and present united to enlist the sympathies of the Northern colonists in Ireland with those of New England. They were drawn from the same classes in England and Scotland. They nourished the same hatred of the episcopal churches.

Ulster's  
sympathy  
with the  
American  
Revolution.  
Analogy  
between  
the  
situations  
in Ireland  
and  
America.

<sup>1</sup> Fisher, *The End of the Irish Parliament*, pp. 70-1.

<sup>2</sup> Lecky, *History of Ireland*, vol. ii. p. 51.

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Whole districts in America were peopled by settlers from Ulster,<sup>1</sup> and the steady drain of migration had established many personal bonds between them. By this time, moreover, the Americans were appealing from precedents which were against them to principles which touched the interest of Ireland more nearly than their own. The British Parliament was asserting the right which it had long claimed over Ireland to legislate for the colonies, and the claim to legislate included the claim to tax. Resistance offered to this doctrine in America rapidly spread to all classes in Ireland. Even in the Dublin Parliament, consisting mainly of country gentlemen and representing only that small section of the population which belonged to the Established Church of Ireland, an address condemning the American rebellion was carried with difficulty by 92 to 52. It was in fact carried by the vote of the rotten boroughs controlled by the Government in a House in which more than half the members abstained from voting. Later on, the influence of the Government was sufficient to induce Parliament to sanction the removal of four thousand of the troops who were appointed by statute to remain in Ireland for its defence, on the understanding that they should be paid, during their absence, from the Imperial Treasury. 'In this manner, to the bitter indignation of a small group of independent members and in defiance of a strong Protestant opinion in the country, Ireland was committed to the American struggle.'<sup>2</sup>

Injurious  
effect of  
the war  
on Irish  
trade.

Before the outbreak of war the Americans had been led by the logic of their contention to deny the right of the British Parliament, exercised from the first, to regulate their industries. Here was a contention which appealed more poignantly to the industrial community of Ulster than any of the more abstract

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 164.

<sup>2</sup> *Ibid.* vol. ii. p. 164.

rights which had been urged. The outbreak of war had brought them, as well as the farmers throughout Ireland, to the verge of ruin. In compensation for the restrictions laid on the woollen industry Ireland was allowed to export certain classes of coarse Irish linens to the American colonies. The closing of these markets by the war and the imposition by the British Government, without consultation with the Dublin Parliament, of an embargo on the export of Irish provisions, for fear that they should reach the revolted colonists or the French, led, during the next few years, to a rapid collapse of Irish trade. In spite of the increasing use of corruption by the Government, the Dublin Parliament became so intractable and the internal condition of the country so serious, that Lord North agreed to relax some of the restrictions on Irish trade, and resolutions to that effect were agreed to by the British Parliament. But the moment they were thrown into the form of Bills a fierce storm of opposition broke out from almost every manufacturing town in Britain. Liverpool, Manchester, Glasgow, and Bristol were conspicuous in their opposition. Burke lost his seat for Bristol by supporting this measure of relief for Ireland. Lord North was so intimidated that he consented to limit the measure in such a way that it failed to relieve the necessities of Ireland. At a time when commerce with America was wholly suspended, it was almost nugatory, and the attitude of the Protestants in Ulster became increasingly menacing.

When in 1778 France declared war, the distracted ministers felt that it was time to conciliate the Catholics and introduced a Bill to relieve them of some of the more vexatious restrictions on holding land. The Northern Dissenters at once demanded the repeal of the Test Act. The Government, terrified at a measure which would have admitted the colonists

War with  
France,  
1778.  
Dangerous  
situation  
in Ireland.  
Enrol-  
ment of  
the  
Belfast  
volunteers  
to resist  
invasion.

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who sympathized with America to the franchise, were not prepared to grant this concession, but the enemies of Catholic emancipation in the Dublin Parliament supported the amendment in order to destroy the whole measure. They failed; for, though the amendment was passed and cut out by the British Government, the Dublin Parliament accepted the Bill in the form in which it was returned. Government, however, had literally counted without its hosts. To retrieve their position in America they had stripped Ireland of troops. France was threatening to invade the Irish coast, and 'a troop or two of horse or part of a company of invalids' was all that could be found for the defence of Belfast. However keenly Ulster might sympathize with the revolt in America, the memories of the Boyne prevented the extension of that sympathy to Catholic France. With characteristic self-reliance they undertook to defend their coasts for themselves. In June 1779, 4000 volunteers were enrolled in Belfast. The movement spread like wild-fire. By the end of September 40,000 more men were in arms under the command of officers elected by the rank and file. The disfranchised Protestants suddenly found themselves masters of Ireland, and a Parliament in which they elected no single member became an instrument in their hands.

The  
volunteers  
supported  
by Grattan  
demand  
and obtain  
freedom  
for Irish  
trade and  
the repeal  
of the  
Test Act  
for Dis-  
senters,  
1779.  
All  
sections  
of Irish

The advocacy of their cause was undertaken by Grattan, the greatest orator of an assembly whose standard of eloquence was second to none. That eloquence, however, had been habitually bought and sold, and it was the inviolable purity of Grattan's character, more than his gifts, which made him so formidable a champion of the Northern industrialists. They were now demanding the removal of all restrictions on Irish exports, and in October 1779 Grattan moved as an amendment to the address 'that it is not by temporary expedients, but by a free export,

that the nation is now to be saved from impending ruin.' He was supported even by men who were members of the Irish executive at the time. Hussey Burgh, the Prime Serjeant, did not hesitate to declare that Ireland was now looking to arguments stronger than those furnished by the mere justice of her cause. "Talk not to me of peace—it is not peace, but smothered war. England has sown her laws in dragon's teeth, and they have sprung up in armed men." A few days later, Burgh sent in his resignation. "The gates of promotion," said Grattan, "were shut as the gates of glory opened."<sup>1</sup> The amendment, together with a vote of thanks to the volunteers, was passed unanimously. Pery, the Speaker, carried the address to the castle through armed files of volunteers. Buckinghamshire, the Viceroy, reported to the Ministry that he was powerless to deal with the situation. Still they refused to yield, and on King William's birthday volunteers marched round his statue on College Green with two cannon inscribed with the motto, 'Free trade—or this.' Belfast ordered Parliament to withhold supplies until the restrictions on Irish trade were removed. In December 1779 the news of Burgoyne's surrender reached England and the Government capitulated. Irish exports were freed, and the markets of America and the Levant opened to Irish merchants. The Bill relieving Dissenters from the test was passed. Henceforward Parliament was to represent the whole Protestant colony, and the Dissenters forthwith began to demand that it should be placed on a footing of absolute equality with that of Britain.

The strength of the volunteers was increasing meantime by leaps and bounds, and by the end of 1780 they numbered from 80,000 to 100,000 armed

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Protestants now represented in Parliament.

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 241.

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men. One incident revealed the impotence of Government. Provisions were being shipped from Cork for the French fleet, and ministers instructed the Viceroy to seize the offending vessels. This, it was pointed out, would be 'equal to the gain of a battle at sea.' The Irish executive protested that such action would be resented by the people as a revival of the old embargo, and would be forcibly resisted. They suggested instead that the Government should buy the contraband stores for itself. The mercantile community of Cork was mainly Protestant, but a system which had imposed on the Irish colony no more responsibility for the safety of the Commonwealth than it had imposed on those of America had yielded exactly the same results. They were reflected in the attitude of Grattan himself. Writing in April of the same year, he remarked, "Ireland must continue in a state of armed preparation dreading the approach of a general peace, and attributing all she holds dear to the calamitous condition of the British interest in every quarter of the globe."<sup>1</sup>

Grattan's  
resolution  
in favour  
of  
legislative  
independ-  
ence  
defeated.

1781.

He now moved in Parliament a formal resolution to the effect that 'No power on earth but the King, Lords and Commons of Ireland is competent to make laws for Ireland.' His colleagues, however, took fright. Landowners began to realize that their titles depended on a law passed by the English Parliament and to ask what would happen if its authority were repudiated. Lord Buckinghamshire's term of office, moreover, was drawing to a close; it was known that he was compiling the usual lists of peerages and compensations, and the debate was adjourned. When Parliament met again in October 1781, Yelverton reintroduced the matter, but, when it came up for consideration in December, the news had reached Ireland that Cornwallis had been forced

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 174.

to surrender at Yorktown. Britain had lost control of the sea, and the Continent of Europe was combining with America for her destruction. An era was already approaching when every one would be called upon to declare whether it was the greater or lesser Commonwealth, the whole or the part, which might claim his ultimate allegiance. Yelverton, who, like the American loyalists, still preferred the greater, withdrew his motion and substituted an address of loyalty to the Crown. He was not alone in the Irish Parliament, for when Flood and Grattan tried to couple the address with the recital of Irish grievances they were decisively defeated.

The spirit and numbers of the volunteers continued, however, to rise. The Dublin Parliament grew frightened and protested against their armed demonstrations. The volunteers declared that it was simply playing with them, and, determining to take matters into their own hands, in January 1782 arranged a convention which was practically a Parliament of their own, in Dungannon. Amongst many of the Dissenters the growth of rationalism in the course of the eighteenth century had gone far to mitigate their Protestant fanaticism, and political principle was gaining a stronger hold than religious prejudice. Their enthusiasm for the independence of the Dublin Parliament dated from their own admission to the franchise. Hitherto the Catholics had not unnaturally regarded the Parliament at Dublin with greater distrust than that at Westminster. A movement was now set on foot amongst the volunteers to enlist the support of the Catholic majority by removing their exclusion from political rights. Charlemont, Grattan, and Flood had collaborated in preparing the business for the meeting at Dungannon, but a serious division of opinion arose. Charlemont and Flood were against conceding

The  
volunteer  
convention  
at Dun-  
gannon,  
1782.  
Conflict-  
ing views  
on the  
question of  
Catholic  
emancipa-  
tion.

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the vote to the Catholics; Grattan was in favour of it. To a Protestant deputation he said, "I love the Roman Catholic. I am a friend to his liberty, but it is only in as much as that liberty is entirely consistent with your ascendancy, and an addition to the strength and freedom of the Protestant community. These being my principles and the Protestant interest my first object, you may judge that I shall never assent to any measure tending to shake the security of property in this kingdom or to subvert the Protestant ascendancy."<sup>1</sup> How the liberty of the Catholic majority was to be reconciled with the complete ascendancy of the Protestant minority Grattan failed to explain, but like other masters of rhetoric, he had always a phrase to reconcile things which were opposite in themselves. No better example could be given of how a mind undisciplined by responsibility will continue to pursue principles while shirking the practical issue to which they lead. The convention at Dungannon passed a somewhat colourless resolution drafted by Grattan, declaring that as Churchmen, Christians, and Protestants they rejoiced in the relaxation of the penal laws against their Roman Catholic fellow-subjects. This carefully phrased resolution averted for the time the danger of division in the Protestant ranks.

Separatist  
resolutions  
passed  
by the con-  
vention  
and by  
the Irish  
Parlia-  
ment.

The volunteers who met at Dungannon in full uniform had opened their proceedings by declaring that 'a citizen by learning the use of arms does not abandon any of his civil rights.' Having thus hinted the nature of their claim to attention, they passed a series of resolutions which were in principle exactly those which had been advanced on behalf of the colonial assemblies by the Congress of Philadelphia.

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 97, quoting Grattan, *Miscellaneous Works*, p. 289.



It must be recalled that in 1778, when it was too late, the British Parliament had passed an Act in principle conceding these demands. A week after the convention the same resolutions were moved by Grattan in the Dublin Parliament. To gain time the Attorney-General warned the Protestant landowners of the possible effect on their titles, and the debate was postponed. Meanwhile Lord North's Ministry had foundered, and Rockingham and Fox had come into power. While in opposition, Fox, who was in close correspondence with Grattan, had consistently supported him; but in office he began to protest that 'he would not consent to see England humbled at the feet of Ireland.' On April 16 Parliament was convened to meet the new Viceroy, who had arrived fourteen days before. In order that he might fully understand the situation, the streets of Dublin were lined by armed volunteers in full uniform. Grattan, declining to delay matters for a single day, proceeded to move his resolutions for the last time. They were carried unanimously, and Grattan informed Shelburne that there was no place for negotiation or compromise. He warned ministers that, if they refused to comply with the demands of the Irish Parliament, Ireland would adopt the same course as the American colonies in 1767. "If our requests are refused we retire within ourselves, preserving our allegiance but not executing English laws or English judgments. We consume our own manufactures and keep on terms of amity with England, but with that diffidence which must exist if she is so infatuated as to take away our liberty."'<sup>1</sup>

1782.

Shelburne pleaded that the powers to be reserved to the Government in matters of trade and foreign affairs should be made the subject of a 'distinct agreement.' Grattan replied that the question was

Surrender  
of the  
British  
Govern-  
ment and  
repeal of  
Poyning's  
Law, 1782.

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 127.

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one not for conference but for surrender, and Fox, a month after he had declared he would not see England humbled at the feet of Ireland, rose in the British House of Commons to propose a surrender to every claim which the Irish Parliament had made. The Act passed by the British Parliament in the reign of George I. declaring their right to legislate for Ireland and to decide Irish cases on final appeal, the power of the Privy Council under Poyning's Law to initiate, to suppress, or to alter Irish legislation, and the perpetual Mutiny Act to which the Irish Parliament itself had assented but two years before, were all to be surrendered. The result was announced to that Parliament on May 27, 1782. It had thus secured for itself the position claimed by the American assemblies previous to the Declaration of Independence of July 4, 1776.

## II

## THE IRISH COLONY: FROM INDEPENDENCE TO UNION

Grattan's  
Parlia-  
ment.  
His belief  
in co-  
operation.  
Free  
grant of  
£100,000  
voted  
for the  
British  
navy.

When the news was received on May 27 that the British Parliament had surrendered to all their demands, Grattan, in moving an address to the Crown, declared that no constitutional question would any longer exist that could interrupt the harmony between the two nations. In speaking to his famous resolutions of the previous month he had said: 'Connected by freedom as well as by allegiance, the two nations, Great Britain and Ireland, form a constitutional confederacy as well as one empire. The Crown is one link, the Constitution another, and in my mind the latter link is the most powerful. You can get a King anywhere, but England is the only country with whom you can participate a free constitution.'<sup>1</sup>

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 301.

Grattan, deeply concerned to justify the position he had created, moved an unconditional grant of £100,000 as a contribution towards the British navy. The vote was passed, and the Dublin Parliament further increased the proportion of Irish troops which might be used for service abroad by 5000 men. Any difficulties that might arise between two separate and sovereign Parliaments were all, as Grattan believed, to be soluble in the formula of co-operation. Thus Grattan furnished himself with an answer to the question with which Grenville in 1764 had confronted the agents of the colonial assembly. The Irish Parliament had hastened to prove its own readiness to share in the cost of Imperial defence.

The British Parliament had renounced all claim to enact laws enforceable in Ireland. But what was to happen if Irish sailors in Irish ships conveying Irish goods were to venture East of the Cape of Good Hope or West of the Horn, into the sphere of the British East India Company reserved for them by English law? What was to happen if they attempted to trade with a foreign state in contravention of British treaties? There was also the burning question of trade with an enemy. If Ireland, repeating the practice of recent years, supplied an enemy with provisions, were the ships conveying them within the jurisdiction of British law? These were the subjects upon which Shelburne had desired a 'distinct agreement' and to Portland, the Viceroy, they had caused deep searchings of heart. On June 6 he had expressed hopes to Shelburne that the Irish Parliament might be induced to pass an Act 'by which the superintending power and supremacy of Great Britain in all matters of State, and general commerce, will be virtually and effectually acknowledged, that a share of the expense in carrying on a defensive or offensive war, either in support of our dominions or

Various questions affecting the external relations of Ireland still remained unsolved.

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those of our allies, shall be borne by Ireland in proportion to the actual state of her abilities, and that she will adopt every such regulation as may be judged necessary by Great Britain for the better ordering and securing her trade and commerce with foreign nations, or her own colonies or dependencies.’<sup>1</sup> Portland believed that Grattan would support such a measure. But he was quickly disabused, and three days later informed Shelburne that it was then impossible to induce the Dublin Parliament to consider it.

Flood  
opposes  
Grattan  
and enlists  
the  
support  
of the  
volunteers.

These were, indeed, questions which Grattan in the true spirit of a Whig was nervously anxious that no one should raise. The forces of human nature were, however, too strong for him. Henry Flood had championed the cause of Irish independence before Grattan, but his mouth had been stopped by a valuable office. In 1781 he was dismissed and henceforward was morbidly anxious to regain his position as leader of the popular cause. He angled, however, for the recovery of his lost offices, only to find that no government would trust him. ‘His ambition,’ wrote the Viceroy, ‘is so immeasurable that no dependence can be placed upon any engagement he may be induced to form.’<sup>2</sup> Flood, determined to declare open war on the Government which had refused his price, now saw his opportunity of supplanting Grattan in the public favour. Realizing that the real power in the land lay, not with Parliament, but with the volunteers, he determined to place himself at their head. In moving for the independence of Ireland Grattan had said: ‘“I watched over her with an eternal solicitude. I have traced her progress from injuries to arms and from arms to liberty. Spirit of Swift: spirit of Molyneux, your genius has

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 326.

<sup>2</sup> Fisher, *The End of the Irish Parliament*, p. 139.

prevailed. Ireland is now a nation. In that new character I hail her: and bowing to her august presence I say, *Esto Perpetua.*" '1 The speech was the most eloquent ever uttered in the Dublin Parliament, but Grattan's words betrayed the consciousness that Irish independence was really the achievement, not of his own eloquence, but of the bayonets of the volunteers who lined the streets outside. He flattered himself, however, that a system which the volunteers had erected by force they would leave to be worked by argument. 'And now, having given a Parliament to the people, the Volunteers will, I doubt not, leave the people to Parliament and thus close specifically and majestically a great work. Their associations, like their institutions, will perish: they will perish with the occasion that gave them being, and the gratitude of the country will write their epitaph.' The volunteers, under the leadership of Flood, were soon to teach him that Ireland was not to be governed by words.

Within a month of Grattan's declaration that no constitutional question could any longer exist to interrupt the harmony between the two nations, leave was asked to introduce in the Dublin Parliament a Bill declaring its sole and exclusive right to make laws in all cases whatever, external as well as internal. Flood supported it, but Grattan persuaded Parliament to dismiss the matter. Flood now fell back on the support of the volunteers who promptly transferred their confidence from Grattan to himself. On July 1 Rockingham died and was succeeded by Shelburne. Lord Temple succeeded Portland as Viceroy, and hastened to report that no Government existed in Ireland. The country was in the hands not of Parliament but of 'a body of armed men, composed chiefly of the middling and lower orders, influenced

The volunteers demand complete autonomy in external as well as internal affairs.

<sup>1</sup> Fisher, *The End of the Irish Parliament*, pp. 125-6.

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by no one and leading those who affect to guide them.' <sup>1</sup> The game was thrown into Flood's hands by the accidental inclusion of Ireland in two Bills passed by the British Parliament for the regulation of trade, and by Lord Mansfield's action in hearing and deciding an Irish case which had been on the lists for trial in the King's Bench before the repeal of the Declaratory Act. The British Government, convinced by Temple that the volunteers were prepared to enforce their demands with the bayonet, determined to concede them. In vain the Duke of Richmond pointed to the impossible nature of the position which they were about to create.

'Suppose that England should have occasion to go to war, and Ireland should find herself disposed to remain at peace, should refuse to give aid, and furnish her quota to the cause of her empire; suppose that, in negotiations for peace, the terms agreed on by the English ministers should be objected to by the Irish; suppose that in regulations and treaties of commerce with foreign states the Irish should contend with the English,—in these and a thousand other possible suppositions, was it possible that this total separation could be submitted to by the people of England?' <sup>2</sup>

The  
British  
Govern-  
ment  
protest  
but are  
obliged to  
give way,  
1783.

Ministers had no answer to make to these questions, but neither had they troops to oppose to the volunteers. It was a case of *force majeure*, and in January 1783 the British Parliament without a division passed an Act of Renunciation, which, six months before, the Irish Parliament had without a division decided to be unnecessary. The Act declared that the 'right claim by the people of Ireland, to be

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 142.

<sup>2</sup> Cornwall Lewis, *An Essay on the Government of Dependencies*, Notes, p. 362.

bound only by laws enacted by his Majesty and the Parliament of that kingdom in all cases whatever, and to have all actions, and suits at law or in equity, which may be instituted in the kingdom, decided by his Majesty's courts, therein finally, and without appeal from thence, shall be, and it is hereby declared to be established, and ascertained for ever, and shall at no time hereafter be questioned or questionable.' It went on to provide that no writ of error or appeal from Ireland should under any circumstances again be decided in England.<sup>1</sup>

Force was now recognized by the volunteers as their one hold over the Irish Parliament. A general election reminded them of the fact that out of 300 seats some 200 were practically pocket boroughs, and that it was as easy as ever for the Government to purchase a majority. The younger Pitt, who was fast rising to power, had already twice moved for reform in the British Parliament in the last two years. In March 1783 a meeting of volunteers in Cork resolved to demand the reform of the Irish Parliament, and on July 1, the Ulster volunteers called for a second convention at Dungannon in the following September. The Duke of Portland, however, who had been Viceroy a year before and knew the real nature of the situation in Ireland, had become Prime Minister on April 2, just four months after the British Government had recognized the independence of the United States. As rapidly as possible troops were hastened back from America and placed under the command of General Burgoyne, and in Ireland the Government proceeded to organize a militia of their own. When in September the volunteers met at Dungannon, the differences which Grattan had succeeded in evading at the previous convention

The unrepresentative character of the Irish Parliament. The volunteers demand Parliamentary reform, but are divided on the Catholic question 1783.

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. pp. 333-4. See also Cornewall Lewis, *An Essay on the Government of Dependencies*, Notes, p. 362.

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began to widen. Grattan, in fidelity to his Whig principles, was in favour of something which he vaguely called Catholic emancipation, provided always that the ascendancy of the Protestants was carefully maintained. Flood and Charlemont were opposed to any concession to the Catholics. Grattan now held aloof from the meeting at Dungannon, and the anti-Catholic party carried the day. The reform of the House of Commons was demanded, but on an exclusively Protestant basis. At Belfast a town meeting was held which approved this resolution, and resolved further that, if the House of Commons should "refuse to express the public will," it would be "the duty of a community of freemen not only to reason but to ACT."<sup>1</sup> It was in harmony with this principle that the Dungannon meeting had resolved that a national convention of the volunteer army of Ireland should be held in Dublin simultaneously with the sitting of Parliament.

The Irish Parliament, relying on the support of the troops returned from America, refuses the demands of the volunteers.

Matters now came to an open rupture between Grattan and Flood. On November 10 the volunteer army met in the Rotunda at Dublin, the volunteers accompanying the deputies in force. The rear was brought up by Napper Tandy with the Dublin artillery, the muzzles of their guns decorated with the words, 'Open Thou our lips, O Lord, and our mouths shall show forth Thy praise.' The convention, however, was again divided on the Catholic question, and the advocates of the Catholic cause were only defeated by a trick. A committee was appointed to prepare a Reform Bill, and in drafting it Flood and Charlemont were able to thwart all proposals to include the Catholics. On November 29, the Bill was sent to Parliament to be passed, the convention remaining in session till the result was known. By this time, however, Burgoyne had 12,000 seasoned

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 147.



troops under his command, and Parliament recovering its nerve refused to register the decrees of the convention. Yelverton, now Attorney-General, moved that the House should not consider the Bill. He, too, at an earlier date had supported the volunteers, but 'when the Volunteers form themselves into a debating society, and with the rude instrument, the bayonet, probe and explore the Constitution, my respect for them is destroyed.'<sup>1</sup> Fitzgibbon told them roundly that the forces of the law were sufficient to crush them to atoms. On a division, leave was refused to introduce the Bill by a majority of more than two to one, and on Yelverton's motion the House resolved that it would maintain its just rights and privileges against all encroachments. This was a direct challenge, but a majority of the volunteers were not prepared to face Burgoyne and his veterans, and, after two days' further talk, the convention dispersed. Unwilling to admit the Catholics to political rights, they felt the absurdity of fighting with one hand for liberties which they were withholding from the Catholics with the other. There were some who realized that if blood was to be shed for reform, reform could not stop short of the point achieved by America, and that before Ireland could become an independent republic, Catholic and Protestant blood must flow together. But these were men who bided their time till Britain should once more find herself at death-grips with a foreign foe.

The old expedient of governing the native Irish through the agency of a Protestant colony had been defeated by the exigencies of the commercial system, which had alienated half the Protestant garrison and had rendered them more ungovernable than the Catholics themselves. The two systems had

Paralysis  
of govern-  
ment in  
Ireland.

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 159.

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together defeated each other, and had utterly failed to create in Ireland the habits and institutions which are the essential foundations of order and law. Except in time of peace it was impossible to maintain any semblance of order in the country, and the moment Britain was at war, she had still to regard Ireland as one of the factors upon which her enemies could certainly count. Flood's Reform Bill was again introduced in the following year, but was rejected on the second reading by a majority of seventy-four. 'From that time the conviction sank deep into the minds of many that reform in Ireland could only be effected by revolution, and the rebellion of 1798 might be already foreseen.'<sup>1</sup>

Discussions of the fiscal relations of the two countries.

Bad seasons, meanwhile, together with the reaction which always follows a long war, had been bringing Ireland to the verge of famine. Farmers and artisans were alike calling for protective duties against Britain. Under the concessions of 1780 Ireland had obtained the same liberty of trade with the colonies and foreign nations as England herself, with the exception of trade East of the Cape of Good Hope as far as the Straits of Magellan, which was still the monopoly of the British East India Company. England and Ireland each had a tariff of its own which it enforced against the other; but the Irish tariff was low while the English tariff was a very high one. The position of Britain and Ireland was in this respect the reverse of the position which exists to-day between the United Kingdom and the self-governing Dominions. Gardiner, a Dublin member, who had just failed to secure a peerage,<sup>2</sup> introduced a Bill to raise the Irish duties against Britain. Flood supported this, but the British Government was able to maintain its majority, and the measure was rejected. The Dublin

<sup>1</sup> Lecky, *History of Ireland*, vol. ii. p. 377.

<sup>2</sup> *Ibid.* vol. ii. p. 383.

mob rushed the Gallery, but were dispersed by troops. The House, before adjourning, invited the Government to submit proposals at their next session for settling the fiscal relations of the two kingdoms.

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Pitt, who had now become Prime Minister, was resolved to abolish the rotten boroughs. He saw clearly enough that the reform of one Parliament would necessitate the reform of the other, and had naturally to ask himself what would be the consequences in Ireland of substituting the control of constituencies for that of individuals over a majority of the seats at Dublin. Long experience had taught the British Government that it was only by appealing to the private interest of the borough-holders that they could depend upon securing from the Irish Parliament a contribution to the burden of Imperial defence. Recent experience showed that, the moment the Dublin Parliament was really controlled by an Irish electorate, that electorate would demand a protective tariff against Britain. Pitt, however, was an avowed disciple of Adam Smith, whose book had been published nine years before. In reading the *Wealth of Nations* his eyes had been opened to the mischievous results of the commercial system, and he came into office with the purpose of giving effect to his master's teaching. The Irish Parliament, he thought, might agree to commit themselves once for all to a contribution towards Imperial defence, if the British Parliament would agree to the permanent establishment of free trade between the two kingdoms. In this way, as he conceived, the motives which compelled the British executive to control the Irish legislature would be removed, and with them the objections to abolishing the rotten boroughs and also the political disabilities of the Catholics. He proposed, therefore, to deal with all three questions together, and Rutland was sent as Viceroy to Ireland

Pitt's  
views on  
parlia-  
mentary  
and fiscal  
reform.

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Pitt's  
scheme  
for virtual  
free trade  
between  
Britain  
and  
Ireland,  
coupled  
with a  
permanent  
Irish con-  
tribution  
to the  
navy.

to carry the scheme. Rutland, however, found the vested interests in the Irish Parliament resolutely opposed to the abolition of the rotten boroughs, and Fitzgibbon and his advisers were quickly able to convince him that a Parliament really representative of the constituencies would render the government of Ireland impossible.

Rutland failed to convince Pitt; but with his own representative against him, Pitt was unable to press his scheme for Irish reform. Though backed by a strong majority, he was seriously hampered in the ranks of his own supporters by a certain distrust of his youth, and in April 1785 his Bill for the reform of the British Parliament was rejected. This for the moment made it impossible for him to press for reform at Dublin. He determined, however, to prepare the way by settling once for all the fiscal and financial relations of the two kingdoms. The Irish Parliament had invited proposals, and Pitt offered a customs convention under which virtual freedom of trade between the two countries was to be guaranteed. All foreign and colonial goods might pass from England to Ireland and from Ireland to England without any increase of duty, and all Irish goods might be imported into England and all English goods into Ireland either freely or under duties which were the same in each country. Where duties in the two countries were now unequal, they were to be equalized by reducing the higher duty to the level of the lower. Except in a few carefully specified cases, there were to be no new duties on importation or bounties on exportation. Each country was to give a preference in its markets to the goods of the other over similar goods imported from abroad. Ireland, on the other hand, was to make a contribution to the Imperial navy on the following lines. The 'hereditary revenue' now

amounted to £652,000 a year, and was steadily rising. Pitt proposed that in every year in which it reached the sum of £656,000 (subject in time of peace, though not in war, to revenue balancing expenditure) the surplus of the 'hereditary revenue' should be appropriated towards the support of the naval forces of the Empire in such manner as the Parliament of Ireland might direct.

The discussions which followed in both Parliaments revealed the inherent impossibility of settling once for all the fiscal and financial relations of two coëqual Parliaments. The proposal for a permanent naval contribution was at once greeted by the word 'tribute.' 'Is it right,' cried Longfield, 'is it constitutional to give a perpetual revenue? It hath been laid down that it is not a tribute. I assert it is. I desire gentlemen to look into the law of nations, and then they will find that the first grant which was voluntary was considered as a tax, but the continuance was counted a tribute.'<sup>1</sup> Pitt saw, however, that a naval contribution which depended upon an annual vote of the Irish Parliament would be precarious indeed. 'As it was his object to make a final settlement in this negotiation and to proceed upon a fixed principle, he wished it to be understood that, as he meant to ensure to Ireland the permanent and irrevocable enjoyment of commercial advantages, so he expected in return that Ireland would secure to England an aid as permanent and irrevocable.'<sup>2</sup> He was willing, however, that the Irish Parliament should decide from time to time how the contribution should be spent, and endorsed a suggestion made in the Irish Parliament that it might be voted for the purchase of Irish products for victualling the navy. Pitt was deeply concerned to remove the last vestige

Irish dislike of a permanent naval contribution, which is stigmatized as 'tribute.'

<sup>1</sup> *Irish Parl. Debates*, vol. iv. p. 208.

<sup>2</sup> *Parl. Hist.* vol. xxv. p. 326.

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of the iniquitous restrictions imposed on Irish trade. He was fast driving home the nails, which Adam Smith had started in the coffin of the commercial system, and saw that, when trade restrictions were gone, Ireland must begin to share on some rational principle in the burden of common defence. But he was dealing with men whose minds were still saturated with the contractual idea. 'We have been further told,' said Grattan, 'in debate and in public prints that our trade has no claim to the protection of the British navy. Sir, you pay for that protection, you paid for it long ago. I tell you that payment was the Crown of Ireland. You annexed the Crown of Ireland to that of Great Britain and have a right to the protection of her navy, as much as she has a right to consider you as a part of her empire. . . . You are prevented from having an Irish navy and should not be reproached with the protection of the British.'<sup>1</sup>

Proposals  
for a  
separate  
Irish navy.  
Pitt on  
the indi-  
visibility  
of  
Admiralty  
control.

There were others who thought that Ireland should contribute to naval defence not in money but in ships. 'I did think,' said Gardiner, 'that as we received the protection of the navy of the Empire, we ought in reason and justice, to contribute something to its support: and had a design to propose our arming and maintaining some frigates for the protection of our trade.'<sup>2</sup> With somewhat different ends in view, as will appear hereafter, Flood was for Ireland's maintaining a navy of her own. 'Do you then forever relinquish the desire of having a navy of your own? Shall Ireland, an island too, at the moment when you tell her of extensive trade, relinquish forever a seaguard of her own and give away her money never to return, to support the navy of the empire?''<sup>3</sup> The memory of the part played by the

<sup>1</sup> *Irish Parl. Debates*, vol. v. p. 489.

<sup>2</sup> *Ibid.* vol. iv. p. 127.

<sup>3</sup> *Ibid.* vol. iv. p. 214.

Irish volunteers with Flood's encouragement in the late war was too recent for such language to be otherwise than alarming, and when the resolutions reached the Parliament at Westminster Pitt adverted to the matter. 'With regard to the Board of Admiralty, he observed that the Admiralty of England was the Admiralty of Ireland, and of the empire at large, and that to divide jurisdiction would be to weaken and almost destroy the naval force of the empire. Nor could there possibly be two Boards of Admiralty, because the branch of executive administration which was under that department, being of a military nature, was one of those which, like the right of appointing ambassadors, belonged personally to the Crown without any local reference to the situation of the dominions.'<sup>1</sup> A most difficult point, however, was raised in debate. Would English seamen in time of war be able to escape the press-gang by taking service in Irish ships? Pitt's answer betrayed his embarrassment. 'The situation of the Irish seamen with respect to this country was to be precisely the same as it was at the present moment: for the same claims which the king of Great Britain had by the laws of Britain to the services of British seamen, he would also have in his capacity of king of Ireland to the services of the seamen of that country. Thus the general welfare of the two kingdoms being one and the same thing, so the principal defence of each, those persons who served in our navy, would be properly under the same head and authority, namely the king of Gt. Britain and Ireland.'<sup>2</sup>

It thus became apparent that, even if fiscal and financial relations could be settled on a permanent footing—which as the event proved was impossible—there were other questions which must sooner or

<sup>1</sup> *Parl. Hist.* vol. xxv. p. 759.

<sup>2</sup> *Ibid.* p. 673.

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but  
opposed  
by the  
commercial  
interests in  
England.

later lead to a deadlock, if the English executive yielded its control of the Dublin Parliament to Irish constituencies. For the moment, however, Grattan threw his influence into the scale in favour of Pitt's proposals, and the Irish Parliament accepted them. They were next submitted by Pitt to the House of Commons at Westminster. He was now to learn the bitter truth of the words quoted from Adam Smith on a previous page. Pulteney, writing to the Duke of Rutland, who was now Viceroy, observed, 'Your Grace remembers probably a remark of Sir Robert Walpole which Pitt has already seen enough to allow the truth of, that a Minister might shear the country gentleman when he would and the landed interest would always produce him a rich fleece in silence: but that the trading interest resembled a hog, whom if you attempted to touch, though you was only to pluck a bristle, he would certainly cry out loud enough to alarm all the neighbourhood.'<sup>1</sup>

Inherent  
defect of  
the scheme,  
viz. that  
commercial  
union was  
impossible  
unless  
Ireland  
adopted  
the  
British  
navigation  
laws.

Pitt's proposals were greeted with a storm of protest from the English manufacturing interests organized by Wedgewood, the Quaker manufacturer of pottery, and supported by Fox. The petition from Lancashire, which alone bore 80,000 signatures, demanded that counsel should be heard against the scheme, and evidence was accordingly taken from the interests concerned. The East India Company succeeded in asserting once more its monopoly of Eastern trade. A new difficulty, moreover, which had not been previously faced was now raised, namely that the non-British West Indian islands, could, under the new arrangement, send their goods to Ireland, import them thence to England, and so nullify the preference then accorded to British colonies. It was realized that to be workable the proposed arrange-

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 182. For Adam Smith's remarks on this subject see above, p. 442.



ment required identity between the two kingdoms, not only in tariffs, but also in the navigation laws which forbad foreign ships to land in Great Britain any goods not produced in the country to which such ships belonged. All other imports into Britain had to be carried in British ships. But if foreign goods could be brought to Ireland in foreign bottoms and thence imported into Great Britain, the protection afforded by the navigation laws to British shipping would be rendered nugatory. As Fox put it: 'If those (the original resolutions) had passed into a law, we should equally have sacrificed the whole of the navigation laws of this country. These laws, the great source of our commercial opulence, the prime origin of our maritime strength, would at once have been delivered up in trust to Ireland, leaving us for ever after dependent on her policy, and on her bounty, for the future guardianship of our dearest interests.'<sup>1</sup>

Obviously it was impossible for a commercial treaty to be negotiated on equal terms if the navigation laws of the two countries were not the same. Equally obviously it was undesirable to stereotype the existing regulations in a matter which admitted of such varying conditions. There were, therefore, two necessities—first, that Ireland should adopt the existing English navigation laws; secondly, that there should be some machinery for ensuring that the future navigation laws of the two countries should be identical. The point was put in the English House of Commons on May 24, 1785, by Eden, an ex-Irish Secretary. 'It had been well stated by the right hon. gentleman who spoke last (Dundas), that if the two kingdoms were to have one trade and one navigation, they must also have one law for the purpose of preserving this union of commercial interests, otherwise it was easy to foresee that it would speedily cease. If

To ensure identity of laws they must be passed by a single Parliament.

<sup>1</sup> *Parl. Hist.* vol. xxv. p. 597.

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then the laws must hereafter be the same in the two kingdoms respecting these extensive objects, it would be an absurdity to suppose that the passing of these laws could be left to both: it must necessarily be given to one: and the only question was under this statement, as to which should have the preference. . . . Undoubtedly if Ireland should decide to accept the essential conditions of the treaty now brought forward, she must waive the independence of her legislature on the points described in the resolution. . . . It was mere nonsense to suppose that the intended compact could otherwise be carried into execution.’<sup>1</sup>

Pitt’s  
amended  
proposal  
that  
British  
shipping  
laws  
should  
apply to  
Ireland.

Pitt was obliged by the unanswerable force of this reasoning to include in the amended resolutions now submitted to the British House of Commons, the following provision: ‘That it is essential . . . that all laws which have been made or shall be made in Great Britain for securing exclusive privileges for the ships and mariners of Great Britain, Ireland, and the British Colonies and Plantations; and for regulating and restraining the trade of the British Colonies and Plantations shall be, in force in Ireland (by Acts to be passed in the parliament of that kingdom) in the same manner as in Great Britain: and that proper measures shall from time to time be taken for effectually carrying the same into execution.’<sup>2</sup>

Irish  
opposition  
to this  
proposal  
encouraged  
by Fox for  
party  
reasons.

The party system is of itself fatal to any policy which depends upon the continuous co-operation of separate legislatures. To beat Pitt was the dominant motive of Fox’s conduct, and he was quick to see how the new resolution might be used to excite the jealousy of the Irish Parliament for their independence so lately achieved. Though he could not defeat Pitt in the Parliament of England, he might yet do so in that of Ireland, and he did not scruple to appeal to their

<sup>1</sup> *Parl. Hist.* vol. xxv. pp. 675-6.

<sup>2</sup> *House of Commons Journals*, vol. 40, p. 1021.

jealousy. 'That she (Ireland) shall agree to follow whatever regulations we may think it right to pursue from time to time for securing the privileges to our shipping or for restraining the trade with our colonies : and that such laws shall be in full force in Ireland is a remedy certainly of a very hazardous kind : but, Sir, though it goes so far it does not satisfy me ; it is dangerous indeed but not efficacious ; nor do I think that, strong and bitter as it is, it will be attended with the various and radical evils which are attached to this pernicious system. I am of opinion, that even if Ireland should agree to this provision, we shall deliver up into the custody of another, and that an independent nation, all our fundamental laws for the regulation of our trade, and we must depend totally on her bounty and liberal spirit for the guardianship and protection of our dearest interests.'<sup>1</sup> Then he turned to play upon Irish suspicions. The proposed convention, he declared, 'bound Ireland to impose restraints "undefined, unspecified, and uncertain, at the arbitrary demand of another State," and he concluded his denunciation by a skilful sentence, which appealed at once to the jealousy of both countries. "I will not," he said, "barter English commerce for Irish slavery ; that is not the price I would pay, nor is this the thing I would purchase."'<sup>2</sup> Sheridan was dexterously harping on the same string. Here was 'unquestionably a proposal on the part of the British Parliament that Ireland should, upon certain conditions, surrender her now acknowledged right of external legislation, and return, as to that point, to the situation from which she had emancipated herself in 1782.'<sup>3</sup>

Fox and Sheridan, recognizing that Pitt was invincible in the Parliament at Westminster, saw

Grattan's  
opposi-  
tion.

<sup>1</sup> *Parl. Hist.* vol. xxv. pp. 610-11.

<sup>2</sup> Lecky, *History of Ireland*, vol. ii. p. 448.

<sup>3</sup> *Parl. Hist.* vol. xxv. p. 750.

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that they might still defeat him in the Parliament at Dublin. Grattan and the Irish Whigs, who were in close communication with the leaders of the British opposition, forgetful of their former anxiety to suppress awkward issues, allowed themselves to be drawn into the manœuvres of parties on the other side of the channel. The substantial changes made by the British Parliament in the resolutions as originally approved by the Irish Parliament on Grattan's advice afforded him a valid excuse for opposing them in their amended form. But he now condemned them as 'subversive to the rights of the Parliament of Ireland' for reasons which were just as fatal to the proposals which he had previously supported. 'Do not imagine that all these resolutions are mere acts of regulation: they are solid substantial revenue, great part of your additional duty. I allow the bill excepts rum and tobacco; but the principle is retained and the operation of it only kept back. I have stated that Great Britain may by these propositions crush your commerce, but shall be told that the commercial jealousy of Great Britain is at an end. But are her wants at an end? Are her wishes for Irish subsidy at an end? No: and may be gratified by laying colony duties on herself and so raising on Ireland an Imperial revenue to be subscribed by our parliament, without the consent of our parliament and in despite of our people. Or if a minister should please to turn himself to a general excise . . . if wishing to relieve the alarms of the English manufacturers who complain of our exemption from excises, particularly on soap, candles, and leather; he should proceed on those already registered articles of taxation, he might tax you by threats, suggesting that if you refuse to raise an excise on yourself, England will raise colony duties on both.'<sup>1</sup>

<sup>1</sup> *Irish Parl. Debates*, vol. v. p. 359.

The point demonstrated at Westminster by the British merchants, which Fox had used to such purpose, was unanswerable. If Britain accorded free trade to Ireland, Ireland must adopt restrictions on foreign trade identical with those imposed by Britain. For if foreign goods might enter Ireland at lower rates or in foreign ships, such trade would pass to Britain through Ireland, thus evading the restrictions imposed by the British custom and navigation laws. Fox, who cared less for serving Ireland than for beating Pitt, had made the most of this point, which Pitt had accepted and embodied in the amended resolutions. No customs convention was possible unless the Irish Parliament were prepared to contract away some part of the legislative independence in external affairs which Flood and the volunteers had wrested from Britain at the point of the bayonet. It was difficulties of this nature which on that occasion Grattan had been so anxious to leave unraised. By the irony of the position to which he had since committed himself, he was now forced to raise them himself. 'It is here said that the laws respecting commerce and navigation should be similar and inferred that Ireland should subscribe the laws of England on these subjects—that is, the same law the same legislature; but this argument goes a great deal too far; it goes to the army, for the Mutiny Bill should be the same: it was endeavoured to be extended to the collection of your revenue, and is in train to be extended to your taxes: it goes to the extinction of the most invaluable parts of your parliamentary capacity; it is an union, an incipient and creeping union: a virtual union establishing one will in the general concerns of commerce and navigation and reposing that will in the parliament of Great Britain; an union where our parliament preserves its existence after it has lost its authority; and our

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The scheme incompatible with Irish independence. It is denounced by Grattan as an 'incipient and creeping union.'

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Demand  
for an  
Irish  
executive  
independ-  
ent of the  
British  
Cabinet.

people are to pay for a parliamentary establishment without any proportion of parliamentary representation.'<sup>1</sup>

Under the influence of Fox, Grattan had relapsed into an attitude of mere negation. As in the previous debate, further points were raised which showed how worthless was the assurance given by Grattan in May 1782, that no constitutional question would any longer exist that could interrupt the harmony between the two nations. Scarcely three years had passed before the demand for a separate executive began to be heard. 'There was a radical absurdity,' said Flood, 'in the whole business: it was absurd for Ireland to attempt a negotiation with Great Britain. . . . How could Ireland negotiate with England upon equal terms? With England! who names her ministers, her negotiators. With England! who influences her cabinet, her privy council, and who has influenced every Parliament of Ireland except the present.'<sup>2</sup> By Griffith the demand for a separate executive was definitely made. 'This country,' he said, 'is in a novel situation: we are now for the first time treating with England and it, therefore becomes necessary that we should have a minister who holds himself independent of any administration in England; who considers himself bound to maintain the rights and interests of Ireland and who is responsible for his conduct to the people of Ireland.' And 'what,' he pertinently asked, 'would be the consequences of either of the contracting parties infringing on the treaty? a circumstance not at all improbable to occur. What provision had been made or what redress was to be had in such a case? Was the breach of one part sufficient to render the whole treaty void? And what was to be the remedy in such a case?'<sup>3</sup>

<sup>1</sup> *Irish Parl. Debates*, vol. v. pp. 355-6.

<sup>2</sup> *Ibid.* p. 310.

<sup>3</sup> *Ibid.* pp. 308-9.

Flood's ironical answer to these queries was couched in ominous terms. 'The right honourable member he thought a little unfortunate in not being able to give an answer to questions which he could answer with very great ease. He has asked, how is a breach of treaty to be redressed? I answer, by fleets and armies; by two armies, one of England, the other of Ireland, but both at the command of England. By a powerful fleet at the command of England, but not a single ship belonging to Ireland.'<sup>1</sup>

As Flood had declared himself in favour of a separate Irish navy, his words can only be interpreted to mean that Ireland must be prepared to enforce her treaty rights against Britain by war. 'Above a hundred years ago,' he had said, 'in the fever of the Restoration and in the infatuation of this kingdom Ireland had made a perpetual grant for the support of an Irish marine. This, England never permitted to be applied. Why? Because she wished to have a monopoly of navy to herself—for what purpose let her subsequent conduct to Ireland explain. What followed? English ministers in spite of law, disappropriated this fund and applied it to an overgrown land army, rather than to a marine. The defence of this land army Britain had, and Ireland had the burden. . . . When British ministers, contrary to legal appropriation, had applied the marine fund of Ireland to a land army for the convenience of Britain, what right had they to come to Ireland to demand a new marine fund, and that not for an Irish marine, but for the British navy? which was in effect to demand that Ireland should forever abdicate any marine, and make a formal recognition that she ought never to have a sea-guard of her own. As to the fact of protection, does Britain keep a frigate for the protection of Ireland?'<sup>2</sup>

Flood's  
opposition  
to Pitt's  
scheme.

<sup>1</sup> *Irish Parl. Debates*, vol. v. p. 309.

<sup>2</sup> *Ibid.* p. 398.

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Flood stigmatized the scheme as nothing but an attack on Irish independence. 'I will raise my voice, I will be heard in the extremity of the land. I say, if you give leave to bring in this Bill, you are no longer a Parliament. Meet it boldly and not like dastards fearful to guard your rights, though you talk bravely to your wives and children, trembling at a foreign nation.'<sup>1</sup>

The Bill  
dropped.  
Its fate  
illustrates  
the  
difficulties  
of negotia-  
tions  
between  
states  
whose  
relations  
are un-  
defined.

There was little surprise, and in Ireland a great deal of exultation, when the Bill, which had been introduced by the leave of a narrow majority of 19, was dropped by the Irish Government. None the less it is an instructive fact that, while Great Britain was able to conclude a commercial treaty with the revolted American colonies, she was unable to come to terms with the sister kingdom of Ireland. Treaties are never so difficult to make, or if made so precarious, as between communities whose mutual relations are undefined. Where the independence of two states is admitted by both as unqualified and unreserved, an element of suspicion is eliminated. But where states are endeavouring to square the political circle and to reconcile their independence with common membership in an 'empire,' they view every proposal for co-operation with the utmost suspicion as 'an incipient and creeping union.' Negotiations between states which admit their mutual independence proceed frankly on the basis of self-interest. Those between states of an inorganic empire are for ever complicated by appeals to some mutual obligation which the parties have failed to define or to realize.<sup>2</sup> Such is human nature, that negotiators

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 189.

<sup>2</sup> The records of the Imperial Conferences, especially those of 1907 and 1911, illustrate these observations. Undefined relations, it may be added, aggravate the difficulty experienced by a Dominion in making a trade agreement with a foreign power. Dread of 'an incipient and creeping' separation from Britain has in the past defeated the project of reciprocity between Canada and the United States of America. On this subject see



cannot resist the temptation of claiming concessions to their particular interests on the ground of Imperial obligation, and the whole atmosphere becomes tainted with hypocrisy. It was this which was constantly vitiating the relations of Austria to the rest of Germany, till Bismarck had forced her to renounce any claim to membership in a German Empire; and it was only when the absolute independence of the German and Austrian Empires was recognized that it became possible to establish satisfactory treaty relations between them.

It is a highly significant fact that the quarrels which embittered the relations of England with Scotland, of Great Britain with the American colonies, and finally of Great Britain with Ireland, had much in common. In all of them the politicians were fond of pointing to the Crown as the sole and sufficient bond of union. By providing for a separate succession under certain contingencies, the Scottish Parliament had proved that a common Crown can afford no permanent basis of union for two separate commonwealths. The temporary insanity of George III. in 1788 at once led to a struggle between the British and Irish Parliaments, which pointed the same lesson. All parties agreed that the Prince of Wales should assume the duties of Regent; but there was a difference of opinion as to the title by which he should assume it. Pitt contended that his powers must be based upon and limited by an Act of Parliament. The doctrine was one that a Whig leader might naturally have been expected to support, but Fox opposed it. He urged that the full regal authority passed automatically to the heir-apparent, and that Parliament had merely to decide the fact of the King's incapacity,

Renewed  
disputes  
over the  
Regency,  
1788.

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Note A at the end of this chapter, p. 521. In the passage there quoted it is instructive to note the analogy between Grattan's argument and that of another great Irishman, Mr. Edward Blake.

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The  
dispute  
illustrates  
the insuffi-  
ciency of  
the Crown  
as a bond  
of union.

and address the Prince of Wales to undertake the Regency. Principles, indeed, had been subordinated to party considerations, for it was believed that the Prince of Wales would dismiss Pitt and call Fox to power. Pitt's views prevailed with the British Parliament, and the Prince of Wales was appointed Regent with certain limitations as to his exercise of patronage.

Once again Grattan yielded to the influence of Fox. His objections to Pitt's view were based upon highly technical grounds. The Irish Parliament might pass an Act empowering the Prince of Wales to exercise the function of the Sovereign in Ireland; but that Act to be valid must first receive the sanction of the Regent, whose right to give it was already based on an Act of the British Parliament. That, argued Grattan, would be tantamount to admitting the dependence of the Irish on the British Parliament. The difficulty was to be met by assuming, as Fox advised, that the Prince of Wales did not require the authority of Parliament to exercise the functions of Regent. Grattan then urged that the Irish Parliament should present an address to the Prince of Wales, calling upon him to assume the office. The spoil-hunters of the Irish Parliament, believing that Pitt would be dismissed and Fox called to power, determined to support Grattan's view, and the address was voted by a majority of over fifty. Buckinghamshire, the Viceroy, refused to transmit it, and it was entrusted to a deputation headed by the Duke of Leinster. The King, however, had recovered before the English debates were at an end and was receiving his ministers by the time the Irish deputation arrived. But the incident had sufficiently revealed the absurdity of the contention that one Crown can permanently afford any real element of unity between two coëqual and sovereign Parliaments. It may stand as the symbol of a unity which the interests or sentiments

of the people require to be preserved. But unless that unity be expressed in time in a real organ of government, the sentiment itself will perish and with it the symbol, when its meaning has gone. It is, in the end, not symbols but organs that alone can unite.

The hold which their influence over the owners of rotten boroughs gave to the English executive was strong enough only to enable Government to live from hand to mouth. Pitt, however, had grasped the fact that the principle upon which the government of Ireland had been based for two centuries, that of holding down the majority by a colonial garrison, was wrong, and that Government could not so much as begin the real tasks which awaited it there until the system was abandoned. The failure of his Irish measures convinced him that it was impossible to carry such reforms through a Parliament which at best represented but a fraction of the Protestant garrison. It was not unnatural that Pitt should begin to regard the merging of the Irish in the British Parliament as the first condition of carrying the measures required to place the relations of the two kingdoms and the relations of the various sections into which Ireland itself was divided on a just footing. To begin with, such a union would of itself settle the fiscal relations of the two countries. The means of carrying such a union, however, were not in sight, and until they were Pitt felt that it was useless to attempt any further settlement of Irish affairs.

Pitt begins to think of legislative union.

In Ireland there were men whose despair of the Dublin Parliament was leading them in the opposite direction. Flood might describe Britain as a foreign nation, and Grattan was never tired of asserting that Ireland had attained her independence in 1782. But, if so, what then was the status which the American colonies, now acknowledged by Great Britain as the United States of America, had achieved at the same

Irish dreams of complete independence.

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The  
French  
Revolu-  
tion. Its  
principles  
welcomed  
in Ireland.

moment? The spectacle of the great republic inevitably provoked a sense of make-believe when the Dublin politicians used the same word independence to describe the relations of Ireland to Britain. In the North, where the republican traditions of the Puritan settlement had never died out, it encouraged the descendants of Cromwell's settlers to dream that the Irish might imitate the American colonies.

In France, however, the effect of the American Revolution was even more rapid. By its active intervention the French monarchy had rendered possible the independence of the American colonies. The blow aimed at Britain by the King of France had cleft the Commonwealth in twain, but 'like to the bullet's grazing, broke out into a second course of mischief' and laid his own throne in ruins. Voltaire and Rousseau had long been sapping the beliefs upon which it had rested, and the condition of public bankruptcy in which the American War had involved France precipitated a crisis. In essence the American Revolution was neither a revolt against inflicted oppression nor against monarchy; but in France it was inevitably regarded as both. To the doctrine of divine right, the essential basis of autocracy in Europe, the establishment of a great republic in America was a deadlier blow than any dealt by Voltaire and Rousseau. Not only in France but throughout Europe men had endured at the hands of monarchs a grinding oppression, and they aspired to achieve a freedom which the Americans had long enjoyed, and only rebelled to keep. In 1789 the Revolution began in France, and its exponents proclaimed not merely a national revolt but a European crusade. On the Continent no worse oppression had been endured at the hands of autocracy than the Irish had suffered under the rule of the British Commonwealth, and nowhere did the doctrines of the Revolution receive

a readier hearing. In Belfast the news of the taking of the Bastille was received with the wildest enthusiasm. The Northern Whig Club, which included in its membership men like Charlemont and Robert Stewart, who ten years later as Lord Castlereagh was Pitt's principal agent in carrying the Union, and afterwards acquired the reputation of a British Metternich, drank toasts to 'The Revolution,' 'The National Assembly of France,' 'The Majesty of the People,' 'Tom Paine,' and 'The Rights of Man.' The volunteer companies again turned out to celebrate the event with a battery of guns and a portrait of Mirabeau, and the future Lord Castlereagh was actually present at the celebration. The tidal wave started by the American earthquake had travelled across the Atlantic. It touched Ireland, flooded France, and surging back again to Ireland almost engulfed it.

The conventions of Dungannon had shown that amongst the volunteers there was a section of Irish Dissenters who, republican before they were Protestant, were prepared to sink their religious differences with the Catholics in order to gain their political ends. They recognized the absurdity of supposing that Irish independence could be achieved or sustained by the Protestant minority alone, and accordingly set out to secure the adhesion of the Catholics to their cause.

Republicanism of  
the North.

The most eager exponent of this idea was Wolfe Tone, a young Irish lawyer of broken fortunes. Events in a quarter as remote as the shores of the Pacific were destined to introduce him to the notice of the public. In 1778 Captain Cook had begun the exploration of the coast which is now the Western seaboard of Canada. In April 1789 some English merchants had followed this up by founding a settlement at Nootka Sound, in the island since called after Captain Vancouver. In 1714 Juan Perez had explored

Threat of  
war  
between  
Britain  
and Spain  
about  
Vancouver  
Island.

1778.

1789.

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this coast on behalf of Spain as far north as latitude 54°, but had never attempted to settle it. Hearing of the English settlement the Spanish Government despatched two war-ships to Nootka Sound, which hauled down the British and hoisted the Spanish flag. Four British vessels were captured and their crews treated with harshness and indignity. In reply to the remonstrances of Britain the Spanish Government cited the Bull granted in 1493 by Alexander VI.,<sup>1</sup> and claimed in virtue of it an exclusive sovereignty over the whole of the Western coast of America. In the hope of obtaining the active support of France, the King of Spain prepared for war. The Jacobins, however, now in the first throes of the Revolution, were nervous lest a foreign war should throw the game into the hands of Louis XVI., whose throne was tottering to its fall. Pitt, who had recently brought the British fleet into a high state of efficiency, promptly mobilized his forces at the cost of three millions. Spain was obliged to yield her pretensions without striking a blow, and Captain Vancouver, who had served under Cook, was sent to plant the British flag upon the island which now bears his name.<sup>2</sup>

Wolfe  
Tone  
claims  
that  
Ireland  
should  
assert her  
neutrality  
in the  
event of  
war.

The immediate interests at stake were trifling compared with the cost incurred in enforcing the British claim; but it is obvious that, unless Pitt had taken this vigorous line, the Dominion of Canada would now enjoy no access to the Pacific. In July 1790 the Irish Parliament, with the warm approval of Grattan, had voted £200,000 in aid of the apprehended war with Spain. While the matter was still pending Wolfe Tone published a pamphlet over the signature of 'Hibernicus,' urging that Ireland should take no part in an English war over Nootka Sound, and appealing to the Irish Parliament not merely to refuse the vote,

<sup>1</sup> See above, p. 135.

<sup>2</sup> See Note B at end of this chapter, p. 523.

but to call upon George III. to notify to Spain the neutrality of the kingdom of Ireland.<sup>1</sup> In the Irish Parliament meantime Sir Lawrence Parsons was once more agitating the questions which had been raised in the adoption of Pitt's commercial proposals: 'Where are our ambassadors?' he asked. 'What treaties do we enter into? With what nation do we make peace or declare war? Are we not a mere cipher in all these, and are not these what give a nation consequence and fame? All these are sacrificed to the connection with England.'<sup>2</sup> He went on to assert that the so-called independence of Ireland had been followed by no improvement in the government, which was fast driving Irishmen to follow the example of America. Parsons' own mouth was eventually shut by an earldom; but Tone afterwards stated that it was Parsons' arguments which first led him to the conclusion that the only hope for Ireland lay in absolute and final separation from Britain.

Presently Tone published a pamphlet under the signature of a 'Northern Whig,' in which he attacked the Irish Parliament itself as the corrupt instrument of British rule. Grattan's achievement of 1782 he described as 'a Revolution which enabled Irishmen to sell, at a much higher price, their honor, their integrity, and the interests of their country; it was a Revolution which, while at one stroke it doubled the value of every borough-monger in the kingdom, left three-fourths of our countrymen slaves as it found them, and the Government of Ireland in the base and wicked and contemptible hands who had spent their lives in degrading and plundering her; nay, some of whom had given their last vote decidedly, though hopelessly, against this our famous Revolution. Who of the veteran enemies of the country lost his place or

He attacks  
Grattan's  
Parliament as  
the corrupt  
instrument  
of British  
rule.

<sup>1</sup> See Note C at end of this chapter, p. 527.

<sup>2</sup> Lecky, *History of Ireland*, vol. iii. p. 6.

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his pension? Who was called forth to station or office from the ranks of the Opposition? Not one! The power remained in the hands of our enemies, again to be exerted for our ruin, with this difference, that formerly we had our distresses, our injuries, and our insults gratis, at the hands of England; but now we pay very dearly to receive the same with aggravation, through the hands of Irishmen; yet this we boast of, and call a Revolution.’<sup>1</sup> Tone referred to the Nootka Sound incident as proving the corrupt subservience of the Irish Parliament to British interests.

He founds  
the United  
Irishmen  
to demand  
Catholic  
emancipa-  
tion, 1791.

His next step was to create a society called the United Irishmen, the object of which was to secure joint action between Catholics and Protestants. He himself was secretary of the parent society in Belfast, and Napper Tandy became secretary of a branch in Dublin. The volunteer companies in Belfast were already calling for the repeal of the remaining laws against Papists, and the Catholic bodies responded in an address. Pitt, believing that the existence of civilized society, not only in France but throughout Europe, was threatened by the progress of the French Revolution, resolved to enlist every element of conservatism in support of the established government. Catholicism, as he saw, was essentially one of them, and he was now determined to conciliate it in spite of the opposition of the Irish Government. In 1792 the Irish Parliament was induced to concede to Catholics the right to vote and to sit on juries, but not the right to sit in Parliament. The omission was a serious one; as they learned to listen, not to their natural leaders, the Catholic gentry, but to the Protestant demagogues, who were intent upon enlisting them in the ranks of the United Irishmen. The political influence of the priests, who were naturally consulted as to which of the rival Protestants

1792.

<sup>1</sup> Wolfe Tone, *Political Works*, pp. 346-7.



candidates ought to receive the Catholic vote, was greatly increased.

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In 1794 the moderate section of the Whigs, who condemned the excesses of the French Revolution and supported the war, broke with Fox and joined Pitt. The Duke of Rutland, as Home Secretary, became responsible for Ireland, and Earl Fitzwilliam was to be sent as Viceroy to Ireland as soon as a new opening could be found for Westmoreland, who was now at the Castle. Fitzwilliam allowed it to be known that he was to replace Westmoreland, and also that he intended to dismiss Fitzgibbon and call Grattan and his friends to office. Pitt, hearing of the matter, refused to consider the dismissal of Fitzgibbon, and after a crisis in the Cabinet, which almost led to the resignation of the Whig ministers, an agreement was arrived at and embodied in writing. Fitzwilliam was to go to Dublin, but there was to be no 'new system' of men or measures, and he was, if possible, to prevent any agitation of the Catholic question during the present session. On January 4, 1795, Fitzwilliam reached Dublin and dismissed all the leading officials except Fitzgibbon. A Catholic Relief Bill was actually introduced in the Irish Parliament, and on February 19, Fitzwilliam was censured by his own chief, Portland, and summarily recalled.<sup>1</sup> Lord Camden took his place. The dismissed officials were restored to their offices, and Fitzgibbon was promoted to the earldom of Clare. In the bitterness of their disappointment a large number of the Catholics were thrown into the arms of the Protestant republicans. By an unforeseen accident Pitt had been thwarted in his attempt to conciliate the Catholic majority. The members of the Established Church were the only section of the population upon whose support the Government could now count. They numbered no more than 450,000,

Fitzwilliam's  
vice-royalty,  
1795.  
His  
proposals  
for the  
relief of  
Catholics  
end in his  
recall.

<sup>1</sup> Rosebery, *Pitt*, pp. 174-81.

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Wolfe  
Tone  
intrigues  
with  
France,  
1795.

and secret agents reported that the Dissenters, who were quite as numerous, were republican. The whole Catholic peasantry, they affirmed, would join the French.

In the year 1795 the United Irishmen reconstructed their society with the avowed object, not of reforming the Irish constitution, but of establishing a republican government with the assistance of French arms. Grattan, whose support they had attempted in vain to enlist, had illusions of his own, but they were not those of a revolutionary mind. In unmistakable terms he warned them that 'the French would merely treat Ireland in a manner most calculated to weaken England; that they would halloo the lower classes against the higher, and make the whole country a scene of massacre; that in a year or two it would be given up by the French again to Great Britain, and that the convulsion would be the ruin of the country.'<sup>1</sup> Grattan's warning was amply justified by events which have since been disclosed in the archives of the French Foreign Office. When in 1797 Lord Malmesbury was negotiating for peace at Lisle, Canada, Newfoundland, Gibraltar, India, and even the Channel Islands were included in the demands secretly formulated by the Directory. No mention, however, was made of Ireland. Not wanting it for themselves, the Directory did not think of asking for terms for their Irish allies.

Disturbed  
condition  
of Ireland.  
Revival of  
racial and  
religious  
animosity.

In reading the polished speeches of Grattan and his contemporaries in Dublin, it is somewhat difficult to remember that social conditions akin to those of the Dark Ages still prevailed in the back blocks of Ireland. Many of the English colonists had never lost the tradition of regarding their land merely as an investment from which to derive an income spent elsewhere. The moment war checked prosperity the condition of

<sup>1</sup> Lecky, *History of Ireland*, vol. iii. p. 384.

the peasants was one approaching famine. Hudson, an intelligent clergyman, writing in 1789, notices 'how many traces of savage life still remained in the population; the same laziness and improvidence, the same unrelenting ferocity in their combats, the same love of intoxication, the same hereditary animosities, handed down from generation to generation.'<sup>1</sup> The rule of law, elsewhere the identifying mark of British government, had scarcely been established in the remoter parts of Ireland like Connaught, where 'the magistrates took a great number of those whom they suspected of being Defenders, and without sentence, without trial, without even a colour of legality, they sent them to serve in the King's fleet.'<sup>2</sup>

The 'Peep-o'-day boys' were an organization formed to drive Catholics out of Protestant districts. The 'Defenders' were a counter organization originally formed by the Catholics to resist these attacks. Inevitably the 'Defenders' turned from defence to aggression, and provoked the formation of the Orange societies, who next attempted to drive the Catholics out of Ulster. In the general paralysis of government the old religious animosities revived, and, in spite of the attempt of the Protestant republicans to unite all the creeds against Britain, suddenly came to the surface. The tumult of religious, political, social, and racial hatreds was like a welter of rock-pent waters into which angry seas are breaking from several directions. Currents seething in the Devil's Punch Bowl or in Hell Bay are no harder to describe than the movements of the various elements in Irish society during the months which preceded the actual outbreak of rebellion. Lord Clare determined that Government should be master, and hastened to enlist yeomanry mainly recruited from the same sections of the population as those which furnished the

Growth  
of rival  
organiza-  
tions,  
Defenders  
and  
Orangemen.

<sup>1</sup> Lecky, *History of Ireland*, vol. iii. p. 423.

<sup>2</sup> *Ibid.* p. 419.

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ranks of the Orangemen. Whether he intended to side with the Orangemen or not, Lord Clare's dragoons were in fact the Orangemen in Government uniforms with Government arms. The Catholics were increasingly thrown into the arms of the United Irishmen, whose ranks were recruited from all religions and races. In Ulster alone it was estimated that 35,000 rebels could be brought into the field, two-thirds of whom were Presbyterians and Deists, and one-third members of the Catholic and Established Churches. Between the Orange yeomanry and the United Irishmen there tended to develop a condition of civil war.

Abortive  
French  
invasion  
under  
Hoche,  
1796.

In 1795 Wolfe Tone, who had fled to America, went to France to persuade the Directory to invade Ireland, urging that its conquest would destroy the naval ascendancy of England. All property belonging to Englishmen in Ireland was to be confiscated, and Tone dwelt especially upon the great sums which some Englishmen had invested in mortgages on Irish land. The French despatched an agent, Count Richard O'Shea, to Ireland, with a promise to send 10,000 men, and arms for twice as many. They exceeded their promises, and in December 1796 Hoche set sail from Brest with 15,000 soldiers and a large supply of arms and ammunition for distribution amongst the United Irishmen. Wolfe Tone accompanied the expedition, which succeeded in evading the British fleets. Part of it reached the south-west corner of Ireland and beat up Bantry Bay. That the French failed to effect a landing was in no way due to the British Navy but to the violence of a storm which made the landing impossible, and drove them out to sea.

Grattan's  
criticism  
of Naval  
policy  
compared  
with that  
of the  
British  
Opposition.

When Parliament met in January 1797, Grattan attacked the British Government for neglecting to protect Ireland. This was, he complained, the second war within fifteen years in which Ireland had been

involved by England and then entirely abandoned.<sup>1</sup> It is instructive to compare this attack on the Government with that made by the Opposition in the British House of Commons, and also with the account which Admiral Mahan gives from his purely military point of view.<sup>2</sup> Bridport, the First Sea Lord, who at this time was in command of the British Navy, was a man of over seventy, whose lack of energy had not only communicated itself to the personnel of the fleets but vitiated his strategic dispositions. Shortly after these occurrences the mutinies at the Nore and Spithead brought the British Empire as near to destruction as it has ever been. He was at fault, moreover, in failing to keep the squadron blockading Brest sufficiently near to prevent Hoche's escape, in keeping his reserves at Spithead instead of at Falmouth, and in neglecting to move the moment he heard that Hoche had sailed. In leaving such a man in command of the fleets at such a time, ministers were guilty of an error of judgment which was afterwards corrected by the appointment of St. Vincent as his successor. They were at fault, moreover, in not instructing Colpoys, who commanded the squadron off Brest, that if Hoche's expedition succeeded in evading him, he should hasten to the Irish coast where Hoche's attack would be really dangerous. The Opposition in the British Parliament was justified to the full in the attack which it made on the errors of judgment committed at this period by the Government in its conduct of naval defence. But the charge brought by Grattan that the British Government was prepared to abandon Ireland or to sacrifice the defence of its coast for that of Britain, was absurd on the face of it. Ireland was then the principal source from which

<sup>1</sup> Lecky, *History of Ireland*, vol. iv. pp. 5-8.

<sup>2</sup> Mahan, *The Influence of Sea Power upon the French Revolution*, vol. i. chapter xi.

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naval provisions were drawn. In Cork Harbour alone there were collected naval stores to the value of £1,500,000, which, if Hoche had succeeded in landing, would have fallen into his hands. The Government knew that Ireland was seething with discontent, and that thousands of the United Irishmen were ready to take up arms in support of the French expedition, which was bringing with it muskets for 41,000 rebels.<sup>1</sup> It had no force in Ireland adequate to deal with the combined forces which Hoche and the United Irishmen could have put into the field, and for the purposes of the war Ireland would then have become French territory. When in exile at St. Helena, Napoleon regarded his failure to attack Britain through Ireland as one of the mistakes of his career. 'On what,' he said, 'do the destinies of empires hang? . . . If instead of the expedition of Egypt, I had made that of Ireland, if slight deranging circumstances had not thrown obstacles in the way of my Boulogne enterprise—what would England have been to-day? And the Continent? And the political world?'<sup>2</sup> The British Government could indeed have dreaded nothing so much as the landing of Hoche in Ireland; merely from the point of view of England's own safety, a landing on any part of the British coast would have been infinitely preferable.

Ireland without a voice in the management of its external affairs. Consequent irresponsibility of Irish criticism.

But in the Irish Parliament it was inevitable that even so able a man as Grattan should regard the matter from a particularist point of view. Like the American assemblies, the Irish Parliament had no voice in the general councils of the Commonwealth on issues of national life and death. They were free to criticise, but there was present in that Parliament no member of the Cabinet responsible for the conduct of external affairs, no minister competent to answer

<sup>1</sup> *Wolfe Tone's Journal*, Dec. 22, 1796.

<sup>2</sup> Las Cases, *Mémoires de Sainte-Hélène*, ii. 335 (ed. 1823).

criticisms which, like those of Grattan, were clean beside the mark. And if sound criticism was offered there, as it was in the British House of Commons, it did not fall on the ears of the ministers who were actually responsible and could scarcely affect their conduct. An Irish Ministry might have been established which would have been responsible to the people of Ireland, through its Parliament, for the conduct of their local and domestic affairs. The policy of granting what is called 'responsible government,' which was followed in respect of the British Colonies at a later date, might have been applied to Ireland; but even so the Irish people could have had no Parliament or Government responsible to it for the issues of peace and war so long as the King of Great Britain remained the King of Ireland. That Ireland should have a separate King, or, as the United Irishmen desired, become a republic, was the policy which Grattan had denounced. Ireland was the Commonwealth to which United Irishmen were prepared to yield obedience, to which they were prepared to subordinate all other interests including those of Britain. Tone and his fellow-conspirators had made their choice, and were ready to face the consequences to the foot of the gallows. Grattan was not prepared to face that choice, even though in a moment of heat he had declared that he would sooner sacrifice the British Empire than the Irish constitution. In his calmer moments he maintained that Britain and Ireland had common and inseparable interests in matters of supreme importance to both. He chose to assume that two independent and equally sovereign commonwealths could be trusted to concur in the defence of those interests. How that concurrence was to be maintained, or where the duty of an Irish citizen lay if it should fail, is a problem to which he never addressed his mind; for he spoke

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more easily than he thought, and could always envelop such problems in a cloud of words which concealed them not more perfectly from his hearers than from himself.

Terrorism  
of the  
United  
Irishmen  
and  
reprisals  
of the  
yeomanry.

Protestant Ulster was now in a condition of smothered war. The state to which the United Irishmen had reduced the country was one of absolute terror. 'It is impossible,' wrote Dean Warburton, 'to give you an idea of how ferociously savage the people have become in these parts.'<sup>1</sup> Loyalists were taking the United Irish oath as the only means of safety. The Government replied by proclaiming martial law, and the loyalist yeomanry enforced it by outrages which exceeded those of the United Irishmen. The situation was indeed growing desperate. In 1795 the United Irish Society appears to have been almost entirely confined to Ulster and Dublin; but by 1797 it had spread over a great part of Ireland, and a military organization had been grafted on to it. The executive of the society computed that half a million members had been sworn, and that more than 280,000 were merely waiting the arrival of the French to rise in arms.

The  
mutiny at  
the Nore  
largely  
caused by  
Irish  
sailors,  
1797.

Ireland is the one spot in the British Commonwealth where anarchy has continuously flourished; but the poison from the abscess has affected every part of it. It had fatally complicated the troubles in America. It now broke out at a moment of extreme peril in a quarter where it was least expected. France had by this time absorbed Holland and seized its fleets, which Hoche was preparing for a fresh invasion of Ireland. The fleets lying at Spithead and in the mouth of the Thames at the Nore were saturated with United Irishmen deported under martial law. In May and June both fleets suddenly mutinied, and for a time the coasts of

<sup>1</sup> Lecky, *History of Ireland*, vol. iv. p. 32.



England were threatened by her own ships as well as by those of her enemies. At this desperate juncture the Commonwealth was saved partly by the firmness of the Ministry and partly by the failure of the French to seize their opportunity. Throughout July, August, and September the Dutch ships were kept in the Texel by contrary winds, and when they issued out on October 8, were signally defeated at Camperdown by Admiral Duncan, the mutineers of May and June fighting with a courage worthy of the best traditions of the fleet. Hoche had died of consumption three weeks before, and the prospect of effective invasion from Holland ended for the moment. 'Grattan meantime continued to inveigh against the war at a time when there was no power, either in England or in Ireland, that could have stopped it.'<sup>1</sup>

At the beginning of 1798 the French renewed their promises of help to the United Irishmen, and the British Government received intelligence of extensive preparations at Dunkirk, Havre, Honfleur, and Calais. Martial law had now been extended throughout the Catholic provinces, and was enforced with frightful barbarities by the yeomanry, who, as has been seen, were simply the loyalist population in arms. House-burning, executions without trial, massacres, and even torture were the order of the day, and provoked similar atrocities on the part of the victims. Open rebellion, for which the United Irishmen had been preparing for the last five years, first broke out amongst the Catholic peasantry on May 23 in the counties of Dublin, Kildare, and Meath, and was quickly followed by a more formidable rising in Wexford. The movement had originated amongst the Protestant colonists of the North, but, owing to a complication of causes characteristic of the tangled

The  
rebellion  
of 1798  
practically  
confined to  
Catholics.

<sup>1</sup> Lecky, *History of Ireland*, vol. iv. p. 190.

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condition of Irish society, the Northern republicans now hung back. Fitzgibbon had his informers in the inner councils of the United Irishmen, and when Hoche's expedition had started from France, suddenly arrested the leaders. The organization never recovered from the blow. Recognizing, moreover, that the seat of the conspiracy was in Ulster, he had first proclaimed martial law there. The industrious Dissenters, who had more to lose than the Catholic peasants, began to realize the consequences of rebellion to their property. By this time, moreover, their instinct for liberty had been outraged by the policy of France, not only in Switzerland and Venice, but towards America, for which the French were now promising a similar fate unless she would finance France as France herself had financed the Americans in the War of Independence. The excesses committed by the wild peasantry of the South when once they had taken arms shocked the more civilized colonists of the North. A deterrent still more powerful was the sudden revival on both sides of religious intolerance, which explains the rapid development of the Orange societies. Hence the United Irishmen in the North found themselves weaker at the heart of their movement than they anticipated, and it was not till well on in June that risings took place in Antrim and Down, which were suppressed in a few days.

French  
troops  
landed at  
Killala  
Bay, 1798.

On August 6, 1798, when the rebellion was practically crushed, Humbert, a French commander, succeeded in landing at Killala Bay on the North-West coast of Ireland with rather over a thousand men. The records of the French invaders give a glimpse of the kind of society in which they found themselves. 'Many boxes of arms and uniforms had been brought over, and when these were opened, the peasantry speedily streamed in. . . . But except a dislike to tithes, which was far more languid in

Connaught than in either Munster or Ulster, they had not an idea in common with the French, and no kind of political motive appears to have animated them. They joined the invaders with delight when they learnt that, for the first time in their lives, they were to receive meat every day. They danced with joy like children when they saw the blue uniforms, and the glittering helmets edged with brown paper to imitate leopard's skin, that were provided for them, and they rapturously accepted the guns that were given them, but soon spoiled many of them by their utter inexperience. It was found necessary, indeed, to stop the distribution of ammunition, as the only way of preventing them from using their new toy in shooting crows.<sup>1</sup> In the West of Ireland the Commonwealth had failed so signally in its task that the French found themselves amongst a people scarcely more civilized than those which Caesar describes in Britain, and their descriptions explain why the peasantry are so often referred to as 'natives' in the military reports of the time. The result was that at the close of the eighteenth century the suppression of the rebellion was, as in the age of Elizabeth and Cromwell, attended by the kind of atrocities which too often disfigure the wars of civilized powers with primitive tribes.

Humbert, after a brilliant victory at Castlebar and a skilfully conducted march into the interior, capitulated on September 8, 1798, at Mochill. The Irish were excluded from quarter and cut down without mercy. Meantime Napper Tandy landed on the Isle of Arran in Donegal, but fled on hearing of Humbert's fate. Another squadron under Admiral Bompard with Wolfe Tone and three thousand men on board was defeated on October 12 by Sir John Warren. Wolfe Tone was captured, and committed

Capitulation of the French invaders, 1798.  
Death of Wolfe Tone.

<sup>1</sup> Lecky, *History of Ireland*, vol. v. pp. 45-6.

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suicide in gaol. 'If his dream of an independent Ireland now seems a very mad one, it is but justice to him to remember how different was then the position of Ireland, both in relation to England and in relation to the Continent. Ireland now contains about an eighth part of the population of the United Kingdom, and it is hopelessly divided within itself. At the time of the rebellion of 1798, the whole population of the two islands was little more than fifteen millions, and probably fully four and a half millions of these were Irish. It was a much larger population than Holland possessed when she confronted the power of Lewis XIV., or the United States when they won their independence, or Prussia when Frederick the Great made her one of the foremost nations in Europe. It was idle to suppose that such a people, if they had been really united and in earnest, could not under favourable circumstances have achieved and maintained their independence; and what circumstance could seem more favourable than a great revolutionary war, which especially appealed to all oppressed nationalities, threatened the British Empire with destruction, and seemed about to lead to a complete dissolution and rearrangement of the political system of Europe?'<sup>1</sup>

Suppression of  
the  
rebellion.

1805.

The news of the Battle of the Nile which arrived at the same time relieved Britain for the moment from the fear that the Irish rebels could draw any further support from France. But it was not till the sea-power of the French was destroyed at Trafalgar, six years later, that the danger was finally removed. The British Isles were in fact guarded from effective invasion, not indeed by ships scattered round her coasts, but by pitched battles fought at the mouths of the Nile or the gate of the Mediterranean. Organized resistance, however, was now crushed in

<sup>1</sup> Lecky, *History of Ireland*, vol. v. pp. 80-1.

the North as well as in the South of Ireland. Atrocities were continued by the loyalists till 1799, and ship-loads of United Irishmen were despatched to Australia. There it was observed that after the arrival of every consignment of Irish convicts serious disturbances broke out in the settlements.

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Tone and his confederates had failed in their object of uniting Ireland in a rebellion against England. The struggle had rapidly assumed the character of a civil war in which the minority, backed by Britain, had trampled the majority under foot, not without many of the atrocities which attended previous struggles of the kind. Whether in peace or war, Ireland was a source from which trouble spread, and is still spreading, through the veins of the entire Commonwealth. Years, perhaps centuries, were required to remedy the neglect of the past, but that work could not begin until there was a real Government in Ireland. The fact had been overlooked that the legislative and executive functions are but aspects of the one indivisible function—Government. Responsibility for government really lay with a British executive, and the independence of the Irish Parliament meant that it paralysed that executive, except in so far as it could be induced by corruption to abdicate its own functions. An effective Government was the primary need, the inexorable condition of satisfying all others. On the morrow of such carnage as Ireland had seen, and of such peril as the whole Commonwealth had sustained, what justification could Pitt have for continuing to accept a system under which Government in Ireland had always to choose between the opposition of Parliament and the purchase of a majority by corruption at the cost of Ireland itself? Its loaded gibbets and smoking ruins were sufficient proof of some radical defect in its

The absence of a truly responsible executive the root of Ireland's troubles. The only cure a legislative union with Great Britain; means by which the Union was carried, 1801.

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system of government. Obviously some change was necessary. What was the nature of the change to be? The only alternative to a system in which the executive controlled Parliament was one in which Parliament would control the executive. But what constituencies in Ireland were to control Parliament? Was Pitt to place that control in the hands of a minority still thirsting for Catholic blood? Or if not, was he to entrust it to the majority which included the United Irishmen and Catholics, from whose hands the pike and torch had just been torn? Such alternatives had only to be stated in order to be dismissed, and, these dismissed, no other expedient remained than to go back to the point where Cromwell had begun, by abolishing the Parliament at Dublin and giving Ireland, like Scotland, representatives in a common Parliament at Westminster. But the consent of the Irish, as formerly of the Scottish Parliament, had to be secured; and in order to obtain a majority, Government had no course but to resort to the means upon which it had always relied whenever the action of the executive depended upon the concurrence of the legislature. Rotten boroughs had long changed hands at high figures. In 1797 Grattan estimated their value at from £14,000 to £16,000 a piece, and Pitt now proposed to expropriate them all at a gross cost of £1,260,000. The arrangement so made was legal and public, and it is estimated that about one-third of this compensation was received by borough-holders who cast their votes against the Union.<sup>1</sup> There is no evidence of purchase of votes by clandestine payments of money. In accordance with the regular practice at Dublin votes were purchased by a lavish distribution of titles, and the Union was effected by means no other than those which for a hundred years had been used by the executive to

<sup>1</sup> Fisher, *The End of the Irish Parliament*, p. 305.

carry their measures. Sodden with corruption, the Irish Parliament was extinguished in one final debauch, like Clarence, content to drown in liquor most dear to its heart.

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In the country the Protestant colonists seem to have been generally, though not universally, opposed to the Union. The Catholics for the most part supported it. Recent events did not lead them to hope that the Dublin Parliament would admit them to its ranks nor that it could relieve them of the disabilities which still seemed to mark them as enemies of the state. Union was held out to them as the prelude of Catholic emancipation throughout the United Kingdom, and as soon as it was consummated Pitt and Castlereagh did their best to realize the promise. But Fitzgibbon had privately convinced George III. that such a measure would be a breach of his coronation oath, and would invalidate his title to the Crown; and throughout the three kingdoms George III. knew that he was supported by an immense force of unreasoning prejudice. Pitt resigned and, though later on he returned to office, never lived to redeem his promise.

Why  
Pitt's  
promise of  
Catholic  
emancipa-  
tion was  
unredeemed  
by him.

As always with political deadlocks, the key was found by appealing from fictions to realities, from forms to principles. One king could unite two or more kingdoms so long as he governed in fact as well as in name. But the development of the Commonwealth had meant that sovereignty was transferred from King to Parliament, that Parliament in fact controlled the King; and, where the sovereignty had passed to two or more Parliaments, it was not in the nature of things that the Crown which they controlled could serve to unite them. That could only happen in so far as the Crown controlled the Parliaments, which meant that the constitution reverted to literal monarchy. As soon, therefore, as the sovereignty

Lessons  
of Irish  
history.  
Union or  
independ-  
ence the  
only choice  
before two  
sovereign  
Parlia-  
ments.

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had passed to two or more Parliaments, the communities which they represented were faced by the inexorable question whether the State was to dissolve into as many independent commonwealths or whether the several parliaments were to be merged into one. A commonwealth no less than a monarchy is a state, and can abate no particle of that infinite claim which distinguishes states from all other forms of human association. Politicians may declare that, whatever the theory of the state may be, in practice it is proved to be otherwise. Like Grattan, they may argue that such abstract questions can be ignored, evaded, postponed, or buried beneath a heap of words, and so they may continue until one of those junctures occurs when states are driven to make their unlimited call on the devotion of those whom they hold to be citizens. Suddenly men find, as in Ireland in the closing years of the eighteenth century, that two different societies are claiming to dispose of their lives and property, and are calling upon them to dedicate both to the preservation of one or the other. The alternatives between which they must choose are presented on the points of opposing bayonets, and then they discover that citizenship, like everything else, admits of no lasting divorce between theory and practice. So it is that sooner or later men in civilized society are called upon to declare what is their state and where they belong. In the debates on the Union, as in the discussions at the making of the American Commonwealth, politicians forgot to juggle with the technicalities of constitutional law. They found themselves uttering truths which at other times they would have dismissed as a logic contrary to the experience of practical men. A single illustration taken from the speech of Grenville will suffice: 'If by the British constitution the royal power could be



exercised free from the control of Parliament, then, indeed, the regal identity might be a bond of connexion; but if the whole system of the regal power was not only under the control, but could not go on without the aid and assistance of Parliament, and the Parliaments of each kingdom were to remain distinct and separate, then, he repeated, the bond of connexion was absolutely null.<sup>1</sup>

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When the Union was effected, the British Commonwealth had still to face fifteen years of the most desperate struggle for existence which it had ever experienced. But in any circumstances more than a few years of union were needed to create in the minds of the British people the habit of thinking of the Irish, not as a separate and subject race, but as part and parcel of themselves. In Ireland poverty in estate and turbulence of spirit were the necessary result of conditions which Britain had suffered to continue for centuries. A series of such measures as Pitt had conceived, the removal of glaring religious disabilities, the recognition of the right of the people to their own soil, the removal of all that savoured of an attempt to govern Ireland as a military colony, and above all education, were needed to raise Irish society to the level of Western civilization, and to incorporate it organically in the tissues of a commonwealth. Such measures could only come as the people of Britain learned to feel that they themselves suffered in Ireland, as a man suffers in his own hand. It was not till 1829 that Catholic emancipation was carried, and then in response to fear rather than duty. The abolition of the Church tithe in 1838 indicated, however, the growth of real sympathy in Britain with the position of the majority of the smaller island. In 1903 the finances of the United Kingdom were

Need of time to develop the spirit of union between the two peoples. Slow growth of this spirit during the nineteenth century.

1829.

1838.

1903.

<sup>1</sup> Cornewall Lewis, *An Essay on the Government of Dependencies*, Notes, p. 366.

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The  
existence  
of this  
spirit an  
essential  
pre-  
liminary  
to the  
final solu-  
tion of  
the Irish  
question.

pledged to the extent of £100,000,000 to repair the essential injustice, three centuries old, by which the soil of Ireland had been given to English and Scottish colonists to be held by them as a pledge for the subjection of its native inhabitants.

The mutual alienation engendered by the ages in which the English, obliged to concern themselves in the government of Ireland, yet thought of its people as aliens and used them not as citizens but dependents, is not to be effaced even in a century. As with men's bodies so with their minds, there are no short-cuts to health when disease has been long and deeply established. The first essential is a clear conception wherein the opposite conditions of disease and health consist. In the relations of Britain and Ireland the fundamental disease has been a sense of alienation so radical that it has been communicated to the English garrison itself. The people of both islands have been divided from each other, and the people of Ireland have been divided against themselves. The union of Ireland with Britain is founded on a quicksand so long as it is based on the divisions of the Irish people. Conversely, a condition of health is one in which the people of both islands feel themselves as much fellow-citizens of one state as do those of Scotland and England, and when they do so, such internal divisions as still make it possible for different sections in Ireland to arm against each other will have vanished. If ever it should prove expedient to unburden the Parliament of the United Kingdom by delegating to the inhabitants of England, Ireland, Scotland, and Wales the management of their own provincial affairs, and the condition of Ireland should prove no bar to such a measure, the Irish problem will once for all have been closed. The policy of Pitt will be acknowledged to have reached its fruition if ever Ireland

should be found peacefully transacting Irish affairs. There will then, within measurable time, be no question that the inhabitants of the British Isles feel to each other as members of one Commonwealth, and whenever they so feel, the condition of health will at last have been realized. But the present inquiry is widely astray in the conclusions to which it points if that feeling of common citizenship can be maintained, much less created, in the breasts of people who do not in fact share in the defence of those interests which are common to all the citizens, always the most important interests though not always easy to recognize as such. If Britain and Ireland have common interests, those interests must be the subject of common laws, and in this Grattan was right, that common laws cannot be made by two Parliaments except in so far as one submits to the other. Such a system can be nothing more nor less than 'a creeping and incipient' return to a condition in which Ireland becomes the reluctant dependent of Britain, a system which must of its nature breed the old sense of alienation, the old failure of mutual responsibility, the old inveterate condition of disease.

Irishmen look back on a past from which no element of tragedy is wanting, and the greatest of all is this, that their sufferings still throw from behind them not the radiance of a martyrdom but the shadow of an execution. They remain in the memories of its people to curse rather than to hallow the land, and to encourage a patriotism which seeks to draw its inspiration from hate. Not seldom that gospel is preached by descendants of those by whose hand the worsts deeds were done, or by whose vote in the Irish Parliament the worst laws which have ever blackened a statute-book were passed. Time and again the sordid tale of wrongs done by the dead to the dead is paraded to kindle the hatreds of the living against

The  
pursuit of  
common  
ideals,  
not the  
memory  
of past  
wrongs,  
the true  
founda-  
tion of  
patriot-  
ism.

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each other. There are signs, however, that this ruinous heritage of an ancient wrong is working itself out, for in Ireland of late years has arisen a school which pleads for a patriotism founded in love rather than hate. Such patriotism, they argue, springs only when and where men study to win from their soil the means of better living for each other rather than for themselves. The pursuit of their own interests may unite men for a moment. No essential or permanent union can result except from a sense of their mutual duties. 'I have always held,' writes the founder of that school, 'that to foster resentment in respect of these old wrongs is as stupid as was the policy which gave them birth; and, even if it were possible to distribute the blame among our ancestors, I am sure we should do ourselves much harm, and no living soul any good, in the reckoning. In my view, Anglo-Irish history is for Englishmen to remember, for Irishmen to forget.'<sup>1</sup>

Ireland  
formerly  
governed,  
not in  
her own  
interests,  
but in  
those of  
Britain.  
The  
inevitable  
failure  
of this  
method.

But the lesson is one to be remembered not only in England but in every other part of the Commonwealth, a lesson as old and as obvious as it is apt to be ignored. What makes a city is men, not walls. What constitutes a state is not land nor its 'natural resources,' but men, living or yet to live, be they black, brown, or white. The primal error in Anglo-Irish relations was the habit, too slowly unlearned, of valuing Ireland for its land rather than its people. Those to whom its destinies were entrusted learned too late to care for the hive more than the honey, and the anger born of wrongs which can only be ended but not undone, has been carried wherever the Irish have swarmed. It was an error arising from a false standard of values, a wrong habit of mind, not in individuals, but in whole communities, and whenever one people set out to rule the destinies of another

<sup>1</sup> Plunkett, *Ireland in the New Century*, p. 26.

there it is waiting to lure them from the one straight and difficult path. They cannot escape it by refusing to tread that path. The one and only way to avoid its snares is to hold aloft the principle against which the error offends, and to examine every step they take in the light which it sheds. In governing peoples too backward to govern themselves the wealth to be drawn from their country is never to be considered as the first object nor indeed as an end in itself. The question to be asked, not first, nor once, but every day is, 'What kind of society the country is destined to support?' for the answer to that question will decide the answer to be given to all others. No one who studies the history of Ireland will think that it can be raised too often by members of a Commonwealth charged with the care of three hundred and fifty millions of fellow-citizens who do not, as yet, share in its government, and also with the task of fitting them to do so.

## NOTE A

GRATTAN'S OBJECTIONS AGAINST PITT'S PROPOSALS FOR COMMERCIAL RECIPROCITY BETWEEN BRITAIN AND IRELAND COMPARED WITH MR. BLAKE'S OBSERVATIONS ON THE PROPOSALS FOR ESTABLISHING COMMERCIAL RECIPROCITY BETWEEN CANADA AND THE UNITED STATES

'Any feasible plan of unrestricted reciprocity involved differential duties; and involved—as to the bulk by agreement, and as to much from the necessity of the case—the substantial assimilation in their leading features, of the tariffs of the two countries. The absence of agreement would give to each country power to disturb at will the industrial system of the other; and unrestricted reciprocity, without an agreed assimilation of duties, was an unsubstantial dream. For example, he said the States could not, without destroying their industrial system, admit free our woollen or iron manufactures, the produce of wool or iron freely imported by us from beyond seas; nor could we, without destroying ours, levy on raw materials higher

See page  
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duties than those laid by the States. Then, since any practical arrangement substantially involved not only differential duties but a common tariff, unrestricted reciprocity became, in these its redeeming features, difficult to distinguish from commercial union.

‘Commercial union—establishing a common tariff, abolishing international custom houses and dividing the total duties between the two countries in agreed proportions—would be the more available, perhaps the only available plan. The tendency in Canada of unrestricted free trade with the States, high duties being maintained against the United Kingdom, would be towards political union, and the more successful the plan the stronger the tendency, both by reason of the community of interests, the intermingling of population, the more intimate business and social connections, and the trade and fiscal relations, amounting to dependency which it would create with the States, and of the greater isolation and divergency from Britain which it would produce; and also and especially through inconveniences experienced in the maintenance and apprehensions entertained as to the termination of the treaty. Therefore he said, “Whatever you or I may think on that head, whether we like or dislike, believe or disbelieve in political union, must we not agree that the subject is one of great moment, towards the practical settlement of which we should take no serious step without reflection, or in ignorance of what we are doing? Assuming that absolute free trade with the States, best described as commercial union, may and ought to come, I believe that it can and should come only as an incident, or at any rate, as a well-understood precursor of political union, for which indeed we should be able to make better terms before than after the surrender of our commercial independence. Then so believing—believing that the decision of the trade question involves that of the constitutional issue, for which you are unprepared and with which you do not even conceive yourselves to be dealing—how can I properly recommend you now to decide on commercial union!”<sup>1</sup>

‘It is hardly necessary to say that the appearance of this letter was a profound and painful surprise to the Liberal party. There was light, perhaps, in the communication. Leading there was not. It was destructive, inconclusive, and embarrassing to the last degree. It was like Emerson’s New England road, which ended in a squirrel track and ran up a tree. Various interpretations were put upon the manifesto, and these were as conflicting as they were uncertain. *The Globe* interpreted the letter as a declaration for political union; *The Empire* as a protest against the disloyal tendencies of the Liberal trade

<sup>1</sup> Address of the Hon. Edward Blake to the members of the West Durham Reform Convention, March 5th, 1891.

policy. Conflicting and contradictory efforts to find a positive policy in the letter led Mr. Blake to publish this additional statement: "The contradictory inferences to which a sentence in my Durham letter, detached from its context, has in several quarters unexpectedly given rise, conquer my reluctance to trespass again so soon upon your columns; and I crave space to say that I think political union with the States, though becoming our probable, is by no means our ideal, or as yet our inevitable future."<sup>1</sup>

'All that can now be said is that only actual negotiations at Washington could have determined the exact force and justice of some of Mr. Blake's criticisms. If unrestricted reciprocity was unworkable except upon the lines of commercial union, then the term was not properly expressive of the intentions of the Liberal leaders, and stood for a proposition which they had refused to accept.'<sup>2</sup>

## NOTE B

### LECKY'S ACCOUNT OF THE NOOTKA SOUND INCIDENT

'He (Pitt) concluded his speech in a strain of justifiable exultation. "The present prosperity of England," he said, "was unexampled." "The season of our severe trial is at an end, and we are at length relieved not only from the dejection and gloom which a few years since hung over the country, but from the doubt and uncertainty which, even for a considerable time after our prospects had begun to brighten, still mingled with the hopes and expectations of the public. . . . As far as there can be any reliance on human speculations, we have the best ground from the experience of the past to look with satisfaction to the present and with confidence to the future." Much of this prosperity, he said, was due to causes which lay beyond the sphere of political acts; to the spontaneous enterprise and industry of the country, and to the normal increase of capital; but much also must be ascribed to the commercial treaty with France, and to the wise adjustment of the whole system of customs and taxation on principles which had never before been so well understood or so skilfully elucidated. "The great work of Adam Smith," said Pitt, "will, I believe, furnish the best solution to every question connected with the history of commerce and with the systems of political economy." But above these immediate causes of industrial prosperity lay others

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<sup>1</sup> Letter to the *Toronto Globe*, March 11th, 1891.

<sup>2</sup> Willison, *Sir Wilfrid Laurier and the Liberal Party*, vol. ii. pp. 176-9.

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which were still more important. Sound politics are the essential condition of permanent material prosperity. The security and prosperity of England; the solidity of credit; the rapid increase of capital; the rapid expansion of industry, are all "necessarily connected with the duration of peace, the continuation of which on a secure and permanent footing must ever be the first object of the foreign policy of this country," and with the maintenance of a constitution in which liberty and law are indissolubly united; which "practically secures the tranquillity and welfare both of individuals and of the public, and provides, beyond any other frame of government which has ever existed, for the real and useful ends which form at once the only true foundation and only rational object of all political societies."<sup>1</sup>

'No one can read this speech without perceiving that it was the speech of a man who was pre-eminently marked out, both by his wishes and by his talents, to be a great peace minister. Pitt had, however, learnt too much from his father to suffer an exclusive attention to financial considerations to make him indifferent either to the security or to the dignity of England. One of the most serious dangers of modern popular politics is that gambling spirit which, in order to lower estimates and reduce taxation, leaves the country unprotected, trusting that the chapter of accidents will save it from attack. The reduction of taxes is at once felt and produces an immediate reputation, while expenditure which is intended to guard against remote, contingent, and unseen dangers seldom brings any credit to a statesman. It is very possible for an English minister to go on year by year so starving the military and naval estimates as to leave the country permanently exposed to invasion, without exciting any general popular apprehension. The warnings of a few competent specialists are easily drowned; each successive reduction of taxation produces increased popularity, and if, owing to the course of politics, an invasion does not take place, writers are sure to arise who will maintain that the event has justified the wisdom of the statesman. It would be as reasonable to argue that, because a house does not happen to have been burnt, the owner had shown wisdom and prudence in refusing to insure it. Among the many noble characteristics of the ministry of Lord Palmerston none is more deserving of admiration than the consistency and resolution with which he maintained the principle, that it is the first duty of an English minister to provide at all costs that his country shall be practically secure from the possibility of a successful invasion, and shall not be found in a condition of impotence if unforeseen danger should suddenly arise. Pitt was of the same school, and he never allowed the armaments of the country to

<sup>1</sup> *Parl. Hist.* xxix. 816-38.



sink into neglect. He was much impressed with the fact that, in 1761 and 1762, Martinique, with a garrison of only 800 men, had held out by means of its fortifications for a whole year against a large English army, and that in the last war Dominica had been taken by the French merely because the English soldiers had no fort to retire to till the fleet could afford them relief. He accordingly carried in 1789 an important scheme for extending the fortifications of the West Indies; he at the same time strengthened the naval forces both in the East Indies and in the Mediterranean; and when, two years later, serious complications had arisen with Spain, it was the promptness and efficiency of the British naval force that chiefly averted the danger.

‘The dispute was of the same kind as that which had led to the Spanish war under Walpole. Some English merchants had begun to seek for the Chinese market furs and ginseng, a vegetable largely employed for medicinal purposes in China, along the north-west coast of America, and had planted an English trading settlement at Nootka Sound, on Vancouver’s Island, near the coast of California. It was a country which had been discovered by Magellan, and first seriously explored by Captain Cook, and it had hitherto been entirely unoccupied by Europeans. The Spaniards had never penetrated to it,<sup>1</sup> but by virtue of a Bull of Alexander VI. they claimed a sovereignty over all lands comprised between Cape Horn and the 60th degree of north latitude—in other words, the entire western coast both of South and North America, and when after a considerable interval they discovered the existence of a British settlement in these distant parts, they determined to suppress it. Two Spanish ships of war accordingly hastened to Nootka Sound, took possession of the British settlement, hauled down the British flag, replaced it by the flag of Spain, captured four English vessels, and treated their crews with extreme harshness and indignity.

‘These events took place in the April of 1789. A few months later, accounts, at first dim and confused, but afterwards more complete, arrived in Europe, and it soon appeared likely that the affair would assume a most formidable character. Complaints were made on both sides. The Spanish ambassador in London was instructed to desire that the subjects of Great Britain should no longer be allowed to trade, settle, or fish on the western coast of America, while the English denied the rights of Spain to this unoccupied coast, and demanded a restitution of the captured vessels, with their properties and crews, an indemnification for the losses they had suffered, and a reparation to His Majesty for the insult that had been

<sup>1</sup> Lecky is in error here. Juan Perez had explored the coast as far as latitude 54° in 1774.

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offered to the British flag. The money value of the Nootka Sound trade and settlement was very small, and certainly not sufficient to compensate for a week of war; but a question of honour and a question of future right of settlement had been raised which could not be suffered to drop. The Spaniards answered the remonstrances of England by stating that the English vessels had been already released and their offence condoned on the ground of their ignorance of the rights of Spain, but they would give no satisfaction or indemnification; they asserted in the strongest terms their exclusive sovereignty over the whole of the western coast of America, and they rapidly collected and equipped a great fleet. Pitt promptly replied by a general impressment of sailors, and by a message to Parliament asking for assistance to defend the honour and interests of the country.

'A vote of credit for a million was at once passed; the fleet was put upon a war footing; each party began to seek for alliances; and it seemed possible that this petty dispute would lead to a general conflagration. Holland and Prussia were appealed to by England, in conformity with the late treaty of alliance. Spain, on the other hand, negotiated with Russia, which was now on bad terms with England; but she especially relied on the assistance of France, which was bound to her by the treaty of 1762. The Revolution was now running its course in that country, and the direction of its policy was very doubtful. Montmorin, the Minister of Foreign Affairs, appears to have inclined to war, and a considerable party hoped that it would give a new turn to the popular passions which had become so formidable at home. Montmorin, in obedience to the treaty of alliance, prepared a French fleet, but he held an ambiguous and undecided language, and offered or suggested a French mediation. Lafayette, whose influence was at this time very great, and who detested England, was a strong partisan of war, but the Jacobin opposition vehemently repudiated it. Nothing, they maintained, could be now more dangerous to the Revolution, nothing would be more likely to save the monarchy, than a foreign war. D'Aiguillon, Robespierre, Lamotte, and above all Barnave, denounced the policy which, in order to stifle the Revolution, was about to plunge France into bankruptcy, and invoke the spirit of conquest in opposition to the spirit of liberty, and they desired to take the power of declaring war from the King. Mirabeau on other grounds was opposed to war, and it was finally agreed that peace and war should for the future be voted by the Chamber, though only on the proposal and with the sanction of the King.<sup>1</sup>

'This decision made it certain that France would not assist Spain in the war, and the latter country therefore found it

<sup>1</sup> See Sybel, *Hist. de l'Europe*, i. 177-82.

absolutely necessary to recede. A skilful negotiator, named Fitzherbert, had been sent to Madrid, and, after some hesitation, a convention was drawn up and signed in October 1790 which substantially satisfied the English demands. It was agreed that Spain should restore the buildings and tract of land taken from British subjects on Nootka Sound and make reparation for all subsequent acts of violence; and the right of navigating and fishing in the Pacific Ocean, and making commercial settlements on its coasts, was secured to both nations under the following restrictions:—British vessels were forbidden to approach within ten sea leagues of any part of the coast actually occupied by the Spaniards. The Spaniards and British subjects were to have equal and unrestricted liberty to trade in all parts of the north-west of America and of the adjacent islands situated to the north of the settlements already occupied by Spain; but neither were to form any settlement on the east or west coasts of South America southward of the Spanish settlements. The success of this negotiation added greatly to the reputation of Pitt and to the prestige of England in Europe, though the cost of the episode, amounting, as we have seen, to nearly three millions, remained to be provided for in the Budget of 1791.<sup>1</sup>

## NOTE C

## NEUTRALITY OF IRELAND IN BRITISH WARS

SPANISH WAR! AN INQUIRY HOW FAR IRELAND IS BOUND, OF RIGHT, TO EMBARK IN THE IMPENDING CONTEST ON THE SIDE OF GREAT BRITAIN: ADDRESSED TO THE MEMBERS OF BOTH HOUSES OF PARLIAMENT.

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———Tecum prius ergo voluta  
Haec animo ante tubas; galeatum sero duelli  
Poenitet! JUVENAL.

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1790.

‘MANY of the ideas in the following pages may doubtless appear extraordinary, and some of them, to cautious men, too hardy. To the first, it may be answered, that, until the present, no occasion has happened where such a question could arise, as I venture to investigate. Since the lately acknowledged independence of Ireland, this is the first time when our assistance

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. vi. pp. 64-70.

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to Britain has become necessary, and the question of right had better be settled in the outset. To the last, I shall only submit, that it is not whether the ideas are hardy, but whether they are true, that is of importance to this Kingdom. If the reason of my countrymen be convinced, I have no doubt of their spirit.

## ‘CONSIDERATIONS ON THE APPROACHING WAR WITH SPAIN

‘MY LORDS AND GENTLEMEN: The Minister of England has formally announced the probability of a rupture with Spain; the British nation is arming with all possible energy and despatch; and, from the Land’s End to the Orkneys, nothing is to be heard but dreadful note of preparation; ships are equipped, press warrants are granted, beating orders issued, and a million raised; all parties unite in one great principle—the support of the national honor, and pulling down Spanish pride; and hope and glowing expectation kindle the native valor of England; the British lion has lashed himself into a fury, and woe to the unlucky Spaniard whom he may seize in his gripe.

‘But this is not all; the Minister of England, in the overflowing of his benevolence to this happy Isle, has been graciously pleased to allow us an opportunity of following the noble beast in the course of glory and of profit; so that we may, from his leavings, glean up sufficient of honor and wealth to emblazon and enrich us till time shall be no more. Press warrants are granted, and beating orders issued here, too, and the youth of Hibernia have no more to do but to take the King’s money first, as earnest, and the riches of Spain follow of course.

‘I know the ardent valor of my countrymen, ever impatient of peace and prompt for battle, heightened and inflamed as it now is by the eloquence of the sergeant and the music of his drum, will strongly impel them, *more majorum*, to brandish the cudgel first, and discuss the merits after; a very common process among them. But you, my Lords and Gentlemen, will, I trust, look a little deeper into things; with all the spirit of our rustics, you will show that you are just and prudent, as well as valiant. *Now* is the instant for consideration, before the Rubicon be passed; and the example which Cæsar shewed, the bravest of you need not blush to follow.

‘It is universally expected, that, at your meeting, the Secretary will come forward, to acquaint you that his Majesty is preparing for war with Spain, and hopes for your concurrence to carry it on, so as to procure the blessings of an honorable peace. This message he will endeavor to have answered by an address, offering, very frankly, our lives and fortunes to the disposal of the British Minister, in the approaching contest; and, that this may not appear mere profession, the popular apprehension is, that it will be followed up by a vote of credit for

three hundred thousand pounds, as our quota of the expense ; a sum of a magnitude very alarming to the finances of this country. But it is not the magnitude of the grant which is the great object ; it is the consequence of it, involving a question between the two countries of no less importance than this : “ Whether “ Ireland be, of right, bound to support a war, declared by the “ King of Great Britain, on motives and interests purely British ? ” If it appear that she is, it is our duty to submit to the necessity, however inconvenient ; if it appear that she is not so bound, but may grant or withhold her assistance to England, then it will be for your wisdoms to consider whether war be for her interest or not. If it be, you will doubtless take the necessary steps to carry it on with spirit and effect ; if it be not, you will make arrangements to obtain and secure a safe and honorable neutrality.

‘ The present is a question of too much importance to both countries, to be left unsettled ; but though it be of great weight and moment indeed, I do not apprehend it to be of great difficulty. The matter of *right* lies in a nutshell, turning on two principles which no man will, I hope, pretend to deny : First, That the Crown of Ireland is an imperial crown, and her legislature separate and independent ; and, secondly, that the prerogative of the Crown, and the constitution and powers of Parliament, are the same here as in Great Britain.

‘ It is, undoubtedly, the King’s royal prerogative to declare war against any power it may please him to quarrel with ; and when proclamation is made here to that effect, I admit, we are then engaged, just as the people of England are, in similar circumstances. But as we have here a free and independent Parliament, it is as undoubtedly their privilege to grant, or withhold, the supplies ; and if they peremptorily refuse them, and the Mutiny Act, I know not how an army is to be paid, or governed, without proceeding to means not to be thought on. It follows, therefore, that the Parliament of Ireland have a kind of negative voice, in the question of war and peace, exactly similar to that of the English Parliament. If, then, they have this deliberative power, they are no further bound to support a war, than the English Parliament is, which may, undoubtedly, compel peace at any time by postponing the Money and Mutiny Bills. They are, therefore, not bound to support any war, until they have previously approved and adopted it. The King of Ireland may *declare* the war, but it is the Parliament only that can carry it on. If this be so, it follows, very clearly, that we are not, more than England, *ipso facto*, committed, merely by the declaration of war of our own King ; and, *a fortiori*, much less are we committed by his declaration, as King of Great Britain, when our interest is endamaged, and the quarrel and the profit are merely and purely English.

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‘If the Parliament of England address his Majesty for war, and, in consequence, war be proclaimed; if we are at once, without our consent, perhaps against our will and our interest, engaged, and our Parliament bound to support that war, in pursuance of that address; then, I say, the independence of Ireland is sacrificed, we are bound by the act of the British Parliament, and the charter of our liberties is waste paper. To talk of the independence of a country, and yet deny her a negative voice in a question of no less import to her well-being, than that of peace or war, is impudent nonsense. But, I hope and trust, no man at this day will be so hardy as to advance such an assertion, or to deny that our Parliament is co-ordinate with that of England, and equally competent to the regulation of all our domestic concerns and foreign interests, with similar powers of assent and refusal, and if so, with equal right to receive or reject a war.

‘From the question of *right*, which will not be denied you, suffer me to call your attention to the question of *expediency*. You may, at your will, draw the sword, or hold out the olive. It remains, therefore, to examine which line of conduct is likely to be most beneficial to your country. Before you commit yourselves, decidedly, to war or peace, it behoves you well to consider the consequences of both to Ireland; see what she can gain, see what she must lose, try how far her interest or her honor is concerned: reflect, that on your first vote depend the properties, the liberties, the lives of thousands of your countrymen; and, above all, remember you are about to make a precedent for future ages, in the great question of the obligation on Ireland to follow Great Britain to war, as a necessary appendage.

‘What, in the first place, are the grounds of the quarrel as to Ireland? and what are the profits she has to look to from the contest between Spain and England?

‘It will not be pretended that *we* have immediately, from our own concerns, any ground for interfering in the approaching war; on the contrary, peace with all the world, but peace with Spain, particularly, is *our* object and our interest. The quarrel is merely and purely English. A few individuals in China, members of a company which is possessed of a monopoly of the commerce to the East, *to the utter exclusion of this country*, fitted out certain ships to trade to the North Western coast of America, for furs, which they expected would prove a lucrative article of traffic. The Spaniards, actuated by pride or jealousy, or both, have, it seems, seized these vessels, to the disgrace of (not the Irish, but) the British flag, and to enforce satisfaction, an armament is preparing. In this transaction the probability is that Spain is in the wrong, and England is acting with no more than a becoming spirit; but the question with us is, not who is wrong, or who is right? Ours are discussions of a

different nature; to foster and cherish a growing trade, to cultivate and civilize a yet unpolished people, to obliterate the impression of ancient religious feuds, to watch, with incessant and anxious care, the cradle of an infant Constitution; these are our duties, and these are indispensable. Removed a hemisphere from the scene of action, unconnected with the interest in question, debarred from the gains of the commerce, what has Ireland to demand her interference, more than if the debate arose between the Emperor of Japan, and the King of Corea? Will she profit if England secure the trade? No. Will she lose if England cannot obtain one Otter skin? No. Shall we eat, drink, or sleep, one jot the worse, whether the Mandarins of Pekin line their doublets with furs purchased from a Spanish or an English merchant? No. Decidedly, then, the quarrel is *English*, the profit will be to England, and Ireland will be left to console herself for her treasure spent, and her gallant sons fallen, by the reflection that valor, like virtue, is its own reward, and that she has given Great Britain one more opportunity to be ungrateful. So much for the ground of quarrel, and the profit *we* are to expect from the war!

‘Let me now humbly submit to your consideration, the actual certainty we are required to sacrifice to these brilliant expectations, and I will do it from your own authentic documents. Subjoined, in an Appendix,<sup>1</sup> is a view of the whole of our commerce with Spain, for the year 1789, from which I shall extract the most important articles here. In doing this, it is my wish to be as correct as possible, but the *value* of most of the articles I am obliged to appreciate by conjecture and inquiry. There is a book in the possession of Administration, called the National Stock Book, wherein the *value* of all the exports and imports is inserted; but this is industriously kept back from you, so that, in the documents submitted to you, containing, in most articles, only the *quantum*, you must content yourselves with doing what I have done, and make the best inquiries you can. It appears that the following are the principal articles of your exports:

Linen	.	.	.	.	£26,779	0	0
Wheat	.	.	.	.	17,056	0	0
Pork	.	.	.	.	17,190	0	0
Butter	.	.	.	.	37,539	0	0
Bacon	.	.	.	.	4,260	0	0
Beef	.	.	.	.	3,207	0	0
Flour	.	.	.	.	3,718	0	0
Barley	.	.	.	.	3,794	0	0
Total					£113,543	0	0

<sup>1</sup> This Appendix, which is voluminous, has not been reproduced, the most important figures contained in it being quoted in the text of the pamphlet.

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Which, with other articles mentioned in the Appendix, makes the gross amount of your exports, £117,428, 3s. 2d.

‘On this trade, I shall only remark, that your staple manufacture, your agriculture and tillage, are most materially concerned.

‘The following, from the same authority, is the account of your imports from Spain in the same year, but I confess myself less competent to ascertain their value. I shall, therefore, unless in one or two of the most material articles, set down only the *quantum* imported:

	Drugs . . . . .	£2,000 value.
	Argal . . . . .	6 cwt.
	Cochineal . . . . .	1,223 lb.
Dyeing Stuffs.	Indigo . . . . .	5,995 lb.
	Logwood . . . . .	790 cwt.
	Madder . . . . .	50 cwt.
	Sumach . . . . .	382 cwt.
	Salt . . . . .	23,226 bushs.
	Brandy . . . . .	17,847 gals. <sup>1</sup>
	Wine . . . . .	977 tuns.
	Canes . . . . .	55,600
Wool.	Beaver . . . . .	150 lb.
	Cotton . . . . .	123 cwt. 21 lb.
	Spanish . . . . .	13 cwt.
Pot ashes, 52,378 cwt. at 25s. per cwt. . . . .		£65,972.

‘Of these, it is to be observed, that the dye stuffs, salt, canes, wool, and pot ash, constitute the materials and implements of future manufactures, the most beneficial species of importation.<sup>2</sup>

‘For the loss of this trade, the only compensation war holds out to you is the provision trade for the army and navy; of all others the least advantageous, as is universally known, to the interests of this kingdom.

‘Such is the present state of your commerce with Spain, the whole of which is, at one blow, cut up; your commerce with other nations loaded with an heavy insurance; your manufactures nipped in the bud, and, in a word, every branch of trade suspended, except the slaughtering of bullocks and men. And for what is all this? *We* have no quarrel with Spain, no infraction of good faith, no national insult to complain of. No, but we have the resentments of a rapacious English East Indian monopolist to gratify, who, at the distance of half the globe, kindles the torch of war amidst the eternal snows of Nootka Sound, and hurls it into the bosom of our commerce. The rising prosperity of Ireland is immolated on the altar of British pride and avarice; we are forced to combat without resentment

<sup>1</sup> Worth about £2,600.

<sup>2</sup> The price of the pot ash I have taken from Anderson, vol. 6, p. 707.



in the quarrel of an alien, where victory is unprofitable, and defeat is infamous.

‘Having examined the question on the ground of profit and loss to Ireland, I presume it appears clearly that we shall make an immense sacrifice of blood, treasure, and trade, to establish a right in which, when it is obtained, we are never to participate. If, therefore, we embark in this war, it is not in support of *our immediate particular interest*; on the contrary, it is evident we shall be very considerable losers by the most prosperous issue. The principle of *expediency*, therefore, must be given up, and it follows that we engage, if at all, on the principle of *moral obligation*: the arguments on this ground are reduceable to three—the *good of the empire*, the *honor of the British flag*, and the *protection which England affords us*.

‘I confess I am, in the outset, much staggered by a phrase so very specious, and of such general acceptation as this of “*the good of the empire*.” Yet, after all, what does it mean? or what is the *empire*? I believe it is understood to mean the kingdoms of Great Britain and Ireland with independent legislatures, united under one head. But this union of the Executive does by no means, to my apprehension, imply so complete an union of power or of interest, that an injury, or a benefit to one, is an injury or a benefit to the other; on the contrary, the present emergency shews that occasions may arise wherein the direct opposite is the fact. It is not two kingdoms being united under one head that involves, as a necessary consequence, a unity of resentment. His Majesty’s electoral dominions are not concerned in this Spanish quarrel, and I would ask how are we more concerned, unless it be that we speak the English language? The King of Hungary is also Grand Duke of Tuscany, yet no man thinks that the Tuscans are bound to sacrifice their trade or their men in his German quarrels, and, in consequence, we see them at this hour neutral, and, therefore, flourishing in the midst of a bloody and destructive war. It is convenient, doubtless, for England, and for her instruments in this country, to cry up the “*good of the empire*” because it lays the power of Ireland at her disposal; but if the empire consists of two parts, one of which is to reap the whole profit of a contest, and the other to share only the difficulties and the danger, I know not why we should be so misled by sounds as to sacrifice solid advantages to the whistling of the name of “*empire*.” The good of the whole empire consists of the good of all the parts; but in our case the good of one part is renounced to establish the good of the other. Let us, for God’s sake, call things by their proper names; let us analyse this unmeaning and fallacious mixed mode “*empire*” into its components, England and Ireland, and then see how the matter stands. England has a quarrel with Spain, in a matter concerning her own interest exclusively, and

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wherein she is to reap the whole profit. Ireland has *no quarrel*, but, on the contrary, a very beneficial intercourse with Spain, which she is required to renounce to her infinite present detriment; she is called on, likewise, to squander her wealth and shed her blood in this English East Indian quarrel, and then she is told, to console her, that she has been advancing "*the good of the empire*"! Let us substitute "*England*" for the "*empire*," and see if it be not nearer the fact and truth. Certainly, if there be such a thing as this "*empire*," and if the general good of this "*empire*" be forwarded by the particular loss and suffering of Ireland, I may be allowed to say, it would be better for her there were none.

'Suppose, in this great era of revolution, the French were to acknowledge the title of his Majesty, set forth on his guineas, to the throne of their kingdom; that he were, in gratitude, to move his royal residence to Paris, and govern England by a French Viceroy, and on French views and principles: suppose the merchants of Marseilles were to quarrel with the Turks in the Levant, and find it expedient to go to war; suppose the merchants of London to have a very gainful trade to the Levant, and to find those same Turks fair and honest dealers—what answer would the intelligent and virtuous Parliament of England give to the Viceroy, who should come forward and demand them to renounce this trade and its profits, to sink the value of their lands, and fetter and cramp their commerce with a load of additional taxes, to send forth the bravest of their youth to battle and slaughter, and then tell them it was all for the good of the *common empire of France and England*? The Viceroy would act like a good Frenchman in making the requisition, but he would find the English nation too determined and too wise to listen to such idle babble, as that of forwarding the *common good* of two independent nations, by the certain loss and detriment and damage of one of them.

'Now, setting aside our prejudice against the idea of a French Viceroy at St. James's, will any man deny that the actual case of Ireland at this day, is exactly parallel with that of England which I have supposed? with this difference, however, that when the war was over, France and England might renew their trade with Turkey, but the trade which is at present in dispute between England and Spain, Ireland can, by no possible contingency, ever attain a share in.

'The argument then stands thus: The quantum of consolidated power in the "*empire*" may be increased by a successful war, but it is distributed entirely to one of the components, while the other is at a certain loss. Suppose the joint strength before the war to be as twelve, England being as eight, and Ireland as four, and after the war to be as fourteen; England being as eleven, with one-third gained, and Ireland as three,

with one-fourth lost; it is very obvious that there would be an increase of power in the "*empire*," resulting, however, from a very alarming defalcation from one of the parts. And this is no exaggerated supposition, when we consider the mode in which each country must necessarily carry on the war. During the contest, to Ireland nothing is certain but a heavy loss of trade, men, and money. Our privateers, from the discouragement to Irish navigation, are few, and navy we have none; whereas, England may not only support the contest, but be absolutely enriched by a Spanish war, even during its continuance. Her powerful navy, her infinite number of corsairs, bring in wealthy prizes from every point of the compass. Where then, is the equality of empire? or what are our temptations to war?

'I have shewn, as I presume, that in the use of the word "*empire*," we are the dupes of a sound; if, as I contend, the good of the empire turns out, when examined, to signify no more than the good of England, purchased, and dearly purchased, at a heavy loss to Ireland, I know not what quixotic spirit of national generosity misguided, or gratitude misplaced, shall pretend to exact such a sacrifice from us. I hasten, therefore, to the next grand argument for our interference, *the honor of the British flag*; an argument, on the face of it, degrading to our country, and dishonorable to our spirit; an argument, the mention of which should make every Irishman hang his head in sorrow and abasement. WHERE IS THE NATIONAL FLAG OF IRELAND? I know there are those who, covering their apathy or their corruption with the specious garb of wise and prudent caution, may raise their hands in astonishment at this, as an idle exclamation; but, I say, that such a badge of inferiority, between the two Kingdoms, is a serious grievance. Is the bold pride of patriotism nothing? Is the ardent spirit of independence nothing? Is national rank nothing? If the flag of England be, as it is, dearer to every brave Englishman than his life, is the wish for a similar badge of honor to Ireland to be scouted as a chimera? Can the same sentiment be great and glorious on one side the channel, and wild and absurd on the other? It is a mortifying truth, but not the less true for its severity, that the honor of the British is the degradation of the Irish flag. We are compelled to skulk under the protection of England, by a necessity of our own creation; or, if we have not created, we have submitted to it. We are contented to be the subaltern instrument in the hands of our artful and ambitious and politic sister, without one ray of generous national pride beaming forth to light us on to our honor and our interest. We raise the lofty temple of her glory, but we cannot, or we dare not, inscribe our name on the entablature. Do we not, in the system of her naval arrangements, see the narrow jealousy, and interested caution of England, betray itself in every feature? Where are

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the docks, the arsenals of Ireland? How many of the British navy have been built in our harbors? Where are the encouragements held out to Irish navigation? What is the fair and liberal and equitable construction laid by Englishmen on the navigation act? *We are not to be trusted!* we are to be kept in pupillage, without a navy, or the rudiments of a navy, that we may be retained in subjection and dependance on England, and so be compelled to purchase her protection, whenever her interest or her pride may think proper to plunge us into a war.

‘And this leads me to the last argument for our supporting Great Britain, *gratitude for the protection which she affords us.*

‘As this is an argument addressed to a very warm and honorable sentiment, and, therefore, likely to have some weight with Irishmen, who feel much better than they reason, I shall take the liberty to examine it with some attention.

‘I lay it down, then, as a principle, that no man has a right to lay another, perforce, under an obligation; I mean, to put him in that state that the obligation becomes unavoidable. No man has a right to run me into difficulties, that he may extricate me from them. The original necessity, superinduced by him, leaves him little, if any claim to gratitude for the subsequent service; but his claim will be infinitely weakened, if, in superinducing this necessity, he does me an actual, violent injury. If a man hire a banditti to attack the house of another, and then volunteer the defence of it, I believe it will not be said that the owner is much indebted to him, though his defence should prove successful; but if, in the attack, the house should be burned and the owner robbed of his goods, and sorely wounded into the bargain, I humbly conceive that the subsequent defence, however sincere, makes but a poor atonement for the original attack, and that if any feeling be excited, it should be a very strong and natural resentment. Now, let us see what is the boasted *protection* of England. When has she ever held it forth that she did not first make it necessary? For her own interest and honor she embarks in war, and drags in this unoffending and unoffended country as a necessary sequel, exposes us to a thousand dangers and difficulties in a cause where we have no hope of profit, or advantage, or glory, for who has heard of the glory of Ireland, merged as it is in that of Great Britain? and then she defends us, or perhaps does not defend us, from the resentment of *her*, not *our* enemy, and so the mighty debt of gratitude accrues; and we are bound to ruin our commerce and lavish our treasure, and spill our best blood in her quarrel, and still remain her debtor for protection in a war, which she has wantonly and unnecessarily, as to this country, plunged us into. If this be the protection of England, I, for one, could be well content that we were left to our own wisdom to avoid, or our own spirit to support a contest.

‘But what becomes of this famous argument of protection, if it appears, by the infallible testimony of facts, that no such thing exists? What have been the wars that England has embarked in for Irish interests? Her most determined supporters cannot allege one. But, perhaps, they may draw on futurity for the deficiency of experience, and tell us that if we wanted her aid, she would be prompt and willing to afford it. Have we, then, forgot the memorable protection of the last war, when one or two paltry American privateers harassed and plundered our trade with impunity, even in our very ports, and the people of Belfast were told, “You have a troop of horse and a company of “invalids, and, if that will not do, you may protect yourselves.” An answer not easily to be forgiven or forgot, and which, perhaps, England herself would now, were it possible, wish unsaid. What were the armaments equipped to compel Portugal to do us justice, but a very few years since? Did the navy of England appear in the Tagus to demand satisfaction for our woollens seized and detained? No: we were left at last, and not without a long and strenuous opposition from the British Minister in Ireland, to extort justice as we might, for ourselves, by a heavy duty on the wines of Portugal. After this, let us not be told of the protection of England.

‘I have examined the question in three great views: as a question of strict right, as a question of expediency, and as a question of moral obligation; and, to my apprehension, in every one of the three, war is peremptorily evil for Ireland. If the Spaniards fall by our hands in an unjust war, their deaths are murder; if we seize their property, it is robbery. Let me now submit to your consideration the probable consequences of your refusing your countenance and support to this war, with respect to the two countries, Spain and England.

‘It may be said that Spain will not consider you as a neutral, though you may call yourselves so. But I say, if you were to address his Majesty, praying him to direct his Ministers to acquaint the Spanish Court with your absolute neutrality, do you think her so unwise a nation as to choose you rather for her enemy than her customer, and so to fling you into the scale of England, already more than a match for her? Do you think that the communication between Spain and Ireland, when the ports of England were closed against her, would not be a source of opulence yet unknown in this country? Would you not have, circuitously, the Spanish trade of England pass through your hands? Would not Spain pay every attention and respect to your flag? or, if she did not, *then* you would have a lawful and fair ground for quarrel, and might, and would, soon teach her that you were not a nation to be insulted with impunity.

‘That England would exclaim, is what we might expect. We know with what reluctance she has ever renounced any badge

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of her domination over this country, and it cannot be supposed she would give up this last without a pang. But, surely, where the right is clearly established, your first duty is to your native land. I renounce the idea of national generosity. What was the language of the wisest of your senators on a great occasion? "*Individuals may be generous, but nations never.*" I deny the tie of national gratitude; we owe no gratitude, where we have received no favor. If we did, in 1782, extort our rights from England at the very muzzle of the cannon, whom have we to thank but *ourselves*? Interested individuals may hold forth the nonsensical cant of the generosity of England; let us, on this important occasion, speak the language of truth and common sense. It is the spirit of Ireland, not the generosity of England, to which we owe our rights and liberties; and the same spirit that obtained, will continue to defend them.

'What can England do to us? With what countenance, what color of justice, can she upbraid us for following her own process? What should Irish policy be, by British example? *First of all, take care of ourselves.* We invade none of her rights; we but secure our own. Why then should we fear her resentment? But the timid will say, she may withdraw the protection of her flag from us, and I answer, let her do so; every thing is beneficial to Ireland that throws us on our own strength. We should then look to our internal resources, and scorn to sue for protection to any foreign state; we should spurn the idea of moving, an humble satellite round any power, however great, and claim at once, and enforce, our rank among the primary nations of the earth. Then should we have, what, under the present system, *we never shall see*, A NATIONAL FLAG, and spirit to maintain it. If we then fought and bled we should not feel the wound, when we turned our eyes to the Harp waving proudly over the ocean. But now, what are the victories of Britain to us? Her's is the quarrel, her's the glory, her's the profit, and to us nothing but the certainty of danger and of death; the action is over, and the name of Ireland is never heard; for England, not our country, we fight and we die. Yet, even under these forbidding circumstances, such is the restless valor of Irishmen, that we rush to action as eagerly, and maintain it as firmly, as if *our* interest, or *our* honor were at stake. We plant the laurel and water it with our best blood, and Britain reposes under the shade.

'I have now done, and with you, my Lords and gentlemen, it rests to estimate the weight of what I have advanced. The Parliament ye constitute is a young Parliament. Your innocence is yet, I trust, untainted by the rank leaven of corruption. Ye have no interests to bias your judgment but the interest of Ireland. Your first opportunity for exertion is a great one—no less than fixing the rank of your country among the nations of

the earth. May the gracious wisdom of Providence enlighten your minds, expand your hearts, and direct your councils to the advantage of your own honor, and the establishment of the welfare and glory and independence of Ireland, for ever and ever.' <sup>1</sup>

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### HIBERNICUS.

<sup>1</sup> *Life of Theobald Wolfe Tone*, edited by his son, William Theobald Wolfe Tone, 1826.

## CHAPTER VIII

### THE AMERICAN COMMONWEALTH

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Geographic  
position  
the primary  
cause of  
Anglo-Irish  
as well as  
of Anglo-  
Scottish  
relations.

IN the history of freedom the growth of the English Commonwealth and its independence of Europe are factors second in importance to none. But unless that growth had included Scotland and Ireland in turn it would probably have perished, and would certainly have failed to exercise the influence it has done, to the immeasurable loss of the world at large. The destinies of the three peoples were and always will be united by the inexorable fact of their neighbourhood to each other and their common severance from Europe by an arm of the sea. This primary feature of insular neighbourhood is common to the two problems of Anglo-Scottish and Anglo-Irish relations, and would not have been altered if Ireland had been peopled by Mongols or Negroes instead of by a race which in composition differs but little if at all from that of the larger island.

In all other  
respects  
Anglo-Irish  
relations  
analogous  
to those  
between  
Britain and  
her depend-  
encies and  
colonies.

To this extent and no further the Irish problem can be illuminated by a study of Anglo-Scottish relations. Otherwise the clue to Irish history is to be found in a study of the relations of the English Commonwealth to its dependencies and colonies beyond the British Isles. For the reasons given in the last chapter Ireland became a field for British colonization, and hence the intimate connection between Irish and American affairs in the last three decades of the eighteenth century. Under the scheme



of colonial federation submitted by Franklin to Congress after the outbreak of war in 1775 Ireland was invited to become a member.<sup>1</sup> 'The first voice publicly raised in America to dissolve all connection with Great Britain came, not from the Puritans of New England, or the Dutch of New York, or the planters of Virginia, but from Scotch-Irish Presbyterians.'<sup>2</sup> The history of Ireland is a compendium of all the difficulties and mistakes which have beset the administration of colonies as well as of dependencies in every part of the world. To be understood Anglo-Irish and Anglo-American relations must always be studied side by side.

It is for this reason that the causes which made for the disruption of the Commonwealth were traced in Chapter VI. to their culmination in the secession of the American colonies. But their effect had still to be felt in Ireland, where the immediate result was an attempt to remodel Anglo-Irish relations on those which the colonies before secession had sought to establish between Britain and themselves. The consequences of this experiment have been treated in the last chapter.

Meantime, however, the American colonists had been driven by the logic of events to test for themselves these principles of political union which they had advocated in their controversy with the British Government. When in February, 1765, Grenville had met the agents of the colonial assemblies, Franklin, speaking on their behalf, had no other solution of the difficulties to suggest than that the British Government should rely upon such voluntary aid as the colonial assemblies might of themselves be willing to grant. The British Parliament might protect their commerce and manage their external affairs.

Hence the method adopted in this inquiry.

Voluntary co-operation represented by the colonists as sufficient to sustain their union with Britain.

<sup>1</sup> Bancroft, *History of the United States*, vol. vii. p. 22.

<sup>2</sup> *Ibid.* vol. iv. p. 55.

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The rupture with Britain compelled them to test by actual experience the value of voluntary co-operation as a bond of union between themselves.

1775.

Events leading to an outbreak of war with Massachusetts.

May 1769.

1773.

‘None,’ wrote Otis, in this very year, ‘but rebels, fools, or madmen will contend that the colonies are independent.’<sup>1</sup> The Empire was one and indivisible, but so far as effort and sacrifice were concerned, it was to be run on the principle of voluntary co-operation. The principle, however difficult to defend in theory, was one under which Britain had prevailed in both hemispheres and had destroyed the power of France in America.

In appealing to facts, however, it was forgotten that, till the close of the Seven Years’ War, the British tax-payers had accepted whatever charges the colonial assemblies had failed to meet. When the final rupture came, the colonists at length found themselves thrown upon their own resources and committed to a war with British resources against them instead of behind them. Clearly the interests of the thirteen colonies in resisting the claims of the British Parliament were one and indivisible, and the assemblies proceeded to assert them on the principle of co-operation.

After the Assembly of New York had yielded to the coercion of the Ministry, the gathering storm centred in New England and finally burst there.<sup>2</sup> In July 1768 two regiments were sent to Boston. The Assembly of Massachusetts, though formally dismissed, continued to sit as a convention, and the inhabitants were requested by a town meeting to provide themselves with arms. All the duties imposed by Townshend, with the exception of that on tea, were repealed by Lord North, who succeeded him at the Exchequer. The Americans continued to boycott tea to the grave injury of the British East India Company, and the tax was further reduced with the idea of conciliating the one, and of relieving

<sup>1</sup> *Answer to the Halifax Libel*, p. 16, quoted by Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 181.

<sup>2</sup> See above, p. 370.

the other. But in Boston the extremists were now determined to deny the jurisdiction of the British Parliament in all colonial affairs, external as well as domestic, in token whereof they boarded the Company's ships, seized their cargoes, and poured them into the sea.

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Dec. 16,  
1773.

On hearing of this outrage North closed the port and appointed General Gage as Governor of Massachusetts to enforce measures of coercion. In June the Massachusetts Assembly invited the other colonial assemblies to send delegates to a general congress, which met at Philadelphia in the following autumn. Meantime, while Gage was putting Boston in a state of defence, the assembly at Salem was concerting measures to arm and organize its supporters throughout the Colony. A force sent out by Gage to destroy the arms and ammunition collected by the assembly at Concord, twenty miles from Boston, came into collision with a party of provincials at Lexington. In the retreat from Concord the British party lost 250 killed and wounded and the provincials less than half that number.

March 1774.

April 19,  
1775.

Gage was superseded by Sir William Howe, whose arrival in May with reinforcements raised the garrison of Boston to 10,000 men. It was obvious that Massachusetts could only be saved by prompt and effective assistance from the rest of the colonies. Those of New England were already levying their militia and despatching them to the scene of action. It was of crucial importance, however, to obtain the active support of the colonies to the South, and the Assembly of Massachusetts can scarcely have forgotten their former backwardness in furnishing contingents until the French or Indian invaders had actually entered their own territories.<sup>1</sup>

Willingness  
of Massa-  
chusetts  
when  
threatened  
by destruc-  
tion to place  
their troops  
at the  
disposal of  
Congress  
and to accept  
a Southern  
general.  
Washington  
appointed  
Commander-  
in-Chief,  
May 10,  
1775.

Delegates from all the colonies were now assembled

<sup>1</sup> See above, pp. 335, 338.

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in Congress at Philadelphia, and the legislators of Massachusetts wisely placed their own forces under the direction of Congress as the nucleus of a continental army. They and the other colonies of New England being willing to see their troops commanded by a general who came from the South, Congress selected Washington as Commander-in-Chief of the American army. The habit of self-government, coupled with the experience of the Seven Years' War, enabled the Americans to discover a real military leader at the start. 'That choice was no doubt in a great measure determined by considerations other than personal fitness. If the southern colonies were to take their full share of interest in the struggle, it was clear that it must not be left to a New England army under a New England general. But we may be sure that the choice, desirable in itself, of a southern general, was made much easier by the presence of a southern candidate so specially fitted for the post as Washington. Not indeed that his fitness was or could be as yet fully revealed. Intelligence and public spirit, untiring energy and industry, a fair share of technical skill, and courage almost dangerous in its recklessness—all these were no doubt perceived by those who appointed Washington. What they could not have foreseen was the patience with which a man of clear vision, heroic bravery, and intense directness, bore with fools and laggards and intriguers; and the disinterested self-devotion which called out all that was noblest in the national character, which shamed selfish men into a semblance of patriotism and factious men into a semblance of union. Still less could it have been foreseen that, in choosing a military chief, Congress was training up for the country that civil leader, without whose aid an effective constitution would scarcely have been attained.' <sup>1</sup>

<sup>1</sup> Doyle, *Cambridge History*, vol. vii. p. 167.

The Massachusetts militia, meantime, had occupied Bunker's Hill, a height overlooking Charles Town, which, if left in their hands, would have rendered Howe's position untenable.<sup>1</sup> By a series of unnecessary frontal attacks they were dislodged at the point of the bayonet in an engagement which cost them 415 men. The British lost some 1050, of whom 92 were officers, the largest percentage of casualties in any engagement since the invention of gunpowder. The firmness of the New Englanders was as splendid as their marksmanship. They retired in order, but only when their ammunition had failed and their trenches had been rushed by overwhelming numbers.

After a performance like this Congress was justified in assuming that the American militia were as brave as the British regulars, and much better shots. Life in the colonies was calculated to produce a race remarkable for courage, straight shooting, and readiness to take up a quarrel. But the colonists had never been answerable for the safety of the Commonwealth as a whole or, in plain words, for beating France and Spain in both hemispheres. To preserve the Commonwealth was to defend America, and the Americans had found that that task was always done for them in the end, however much or little they might do for themselves. They had never known what it was to feel that it was they who must pay the price of national existence. They had never, in a word, come in contact with the iron facts of national life and death, the ultimate anvil where alone commonwealths can be wrought to their true temper and shape. Hence they had failed to develop the spirit as well as the organization which enables a community to call out its full fighting strength and keep them in the field so long as the public interest may require their services. Such at any rate is the

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Bunker's Hill, June 17, 1775, proved the courage and marksmanship of the American militia.

Failure of the colonial system to develop public spirit as proved by subsequent experience.

<sup>1</sup> See Map (A) on Plate X. at the end of this volume.

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conclusion to which the most judicious and careful of historians was led by his study of contemporary records.<sup>1</sup> 'The truth is, that although the circumstances of the New Englanders had developed to a high degree many of the qualities that are essential to a soldier, they had been very unfavourable to others. To obey, to act together, to sacrifice private judgment to any authority, to acknowledge any superior, was wholly alien to their temperament, and they had nothing of that passionate and all-absorbing enthusiasm which transforms the character, and raises men to an heroic height of patriotic self-devotion. Such a spirit is never evoked by mere money disputes. . . . Any nation might be proud of the shrewd, brave, prosperous, and highly intelligent yeomen who flocked to the American camp; but they were very different men from those who defended the walls of Leyden, or immortalised the field of Bannockburn. Few of the great pages of history are less marked by the stamp of heroism than the American Revolution; and perhaps the most formidable of the difficulties which Washington had to encounter were in his own camp.'<sup>2</sup>

Weakness  
of American  
patriotism.  
Its failure  
to support  
Washington's  
continental  
army. His  
reliance on  
the Irish.

From first to last Washington found himself faced by the same difficulties as the British generals in the Seven Years' War. As soon as the enemy had crossed the frontiers of their own colony and was ravaging its territories the militia would turn out, and their knowledge of the country and marksmanship combined with their courage and resourcefulness to render them as formidable as undisciplined guerillas can be in embarrassing the progress of an organized army. But the moment that army retired from their own to a neighbouring colony the local militia began to disperse to their homes. Such levies were not

<sup>1</sup> For Lecky's conclusions upon this subject see the passage quoted above, p. 415.

<sup>2</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 229-30.

more able to expel the British forces from America than were the Spanish guerillas thirty years later able to expel the French from the Peninsula, until Wellington brought on the scene an army which could beat them in the open field. Washington saw from the outset that the local resistance of the colonial militia might prolong, but could never end, the war, unless he succeeded in creating an American army strong enough to face British armies and crush them; and in doing so his greatest difficulty arose from the fact that the colonial system had done nothing to create an American spirit. To that extent the statecraft which had sought to divide the colonies in order to strengthen the Empire had achieved its miserable purpose. Washington overcame these difficulties by dint of a patience and selflessness almost without parallel in history, which gradually communicated itself to his fellow-countrymen. In seven years he created the continental army which ended the war at Yorktown. But its ranks were recruited less from the native-born than from immigrants. Its largest contingent was furnished by the Irish Presbyterians, whom the commercial system and landlords like Lord Donegal had driven into exile and inspired with an inveterate hatred of British rule.<sup>1</sup> 'As for the genuine sons of Hibernia, it was enough for them to know that England was the antagonist.'<sup>2</sup> In recruiting this army Washington owed more to hatred brewed in the old country than to the public spirit developed in the new.<sup>3</sup>

<sup>1</sup> See above, p. 447.

<sup>2</sup> *Memoirs of a Life chiefly passed in Pennsylvania within the Last Sixty Years*, Edinburgh 1822, quoted by Trevelyan, *The American Revolution*, vol. ii. p. 137.

<sup>3</sup> 'A record has been preserved of the nationalities in a company of Pennsylvanian volunteers which marched to join the army of Washington. Out of seventy-three privates, two were from Germany, twenty from Ireland, and six from Great Britain' (Trevelyan, *The American Revolution*, vol. ii. p. 139). Lecky (*History of England in the Eighteenth Century*, vol. v. p. 17) endorses this view. 'The Irish Presbyterians,' he says, 'appear to have been

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Failure of  
the colonies  
to respond  
adequately  
to Washing-  
ton's appeal  
for recruits  
at Boston.  
His dis-  
illusion-  
ment.

On assuming the command at Cambridge of the forces investing Boston, Washington found that of an army supposed to consist of 17,000 men no more than 14,500 were available for service. Colonel Lee had estimated that three or four months' recruiting should produce 100,000 men. 'But the high spirit and enthusiastic ardour which had brought such numbers into the field after the battle of Lexington, was already beginning to dissipate; and all the alacrity for the service, which had been expected, was not displayed. Many were unwilling to continue in it; and others annexed special conditions to their further engagement.'<sup>1</sup> A month's recruiting yielded no more than 5000. Henceforward the letters of Washington are those of a disillusioned man. 'Such a dearth of public spirit,' he wrote on November 28, 1775, 'and such want of virtue, such stock-jobbing and fertility in all the low arts to obtain advantages of one kind or another in this great change of military arrangement, I never saw before, and pray God's mercy that I may never be witness to again. . . . I have been obliged to allow furloughs as far as fifty men to a regiment, and the officers, I am persuaded, indulge as many more. . . . Such a mercenary spirit pervades the whole, that I should not be at all surprised at any disaster that may happen. . . . Could I have foreseen what I have experienced, and am likely to experience, no consideration upon earth should have induced me to accept this command.'<sup>2</sup> 'No troops,' he writes elsewhere, 'were ever better provided or higher paid; yet their backwardness to

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everywhere bitterly anti-English, and outside New England it is probable that they did more of the real fighting of the Revolution than any other class.' According to Galloway, the loyalist speaker of the Pennsylvanian Assembly, half Washington's army were Irishmen, and not more than one quarter were native Americans (see above, p. 416).

<sup>1</sup> Marshall, *The Life of Washington*, vol. ii. p. 329.

<sup>2</sup> Washington, *Writings*, vol. iii. pp. 178-9.



enlist for another year is amazing. It grieves me to see so little of that patriotic spirit which I was taught to believe was characteristic of this people.’<sup>1</sup>

In England, however, the Ministry had allowed the efficiency of the navy to fall so low that it failed to secure the passage of the supplies destined for the relief of Howe. By the capture of some of them at sea Washington was able to equip his own troops with arms and ammunition, of which he stood in the greatest need. Recruiting had only just kept pace with the daily wastage of his ranks, which now scarcely exceeded 14,000 men. Washington, however, by persuading the Massachusetts Assembly to lend him six thousand of their local militia, was strong enough to occupy Dorchester heights, overlooking Boston, and to compel the retirement by sea of the British garrison and of the loyalists to Halifax.

Presently, however, Lord Howe, with a powerful fleet and reinforcements from England, joined forces with his brother, Sir William. Together they sailed up the estuary of the Hudson river, attacked the Americans on Long Island, and defeated them. Washington, however, was allowed to withdraw his forces across the East river to New York, where he was again defeated and once more allowed to slip across the Hudson to New Jersey. His own army had now dwindled to 3000 effectives, and General Lee’s army, which had been left east of the Hudson river, ‘was melting away, under the influence of the same fatal cause which had acted so universally and so banefully, and would soon be almost totally dissolved. General Mercer, who commanded a part of the flying camp stationed about Bergen, was also called in; but these troops had only engaged to serve till the first day of December; and, like the other six months’ men, had already abandoned the army in

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Howe forced  
by failure of  
supplies to  
evacuate  
Boston,  
March 1776.

Washington  
driven from  
New York  
by the  
combined  
forces of  
Sir William  
Howe and  
his brother.  
Rapid dis-  
solution of  
his forces.

<sup>1</sup> Washington, *Writings*, vol. iii. p. 181.

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Howe's  
retirement  
to winter  
in New  
York after  
allowing  
Washington  
to escape.  
November  
1776.

Failure of  
Congress to  
acquire from  
the States  
a constitu-  
tional  
position  
till 1781.  
Inefficiency  
of the  
Constitution  
then  
granted.

great numbers. No hope existed of retaining the remnant of them, after they should possess a legal right to be discharged, and very little of supplying their places with other militia.'<sup>1</sup>

Had Sir William Howe shown a spark of initiative or allowed Cornwallis to show any, their enemies might have been destroyed at any one of the several rivers which crossed their retreat to Philadelphia. Washington, however, was allowed to cross the Delaware at Trenton with the dwindling remnant of his army. Then and for months after, as Washington himself declared, Philadelphia lay at the mercy of Howe, who preferred, however, to retire for the winter into comfortable quarters at New York.

It was not men, but a man, that England needed at this juncture. If Washington and Howe could have changed places the American forces would have been scattered like chaff. It is equally certain that, if Washington and Howe could have changed forces, England by the close of 1776 would not have been holding a foot of American territory beyond the range of the guns on her ships. The Americans had not merely a consummate leader, but men and means enough to expel any troops which Britain could have landed on their soil unless they had been directed by a general of more than average ability. But the colonists lacked the political machinery for collecting the necessary resources and placing them at the disposal of Washington. Throughout the war, and for several years after, they were testing those principles of co-operation which they had formerly asserted were sufficient to preserve the Empire against disruption or attack. The Congress of Philadelphia was, as its name indicated, a meeting of envoys from the thirteen assemblies collected to facilitate mutual intercourse. Each State, through its representatives, cast one vote

<sup>1</sup> Marshall, *The Life of Washington*, vol. ii. pp. 593-4.

and one only, but none of them admitted that they were bound by a majority of votes. The Congress of Philadelphia was no more organic than the congress of European ambassadors which met in Whitehall during the Balkan crisis of 1913, under the presidency of Sir Edward Grey. Franklin, who had been at Albany in 1754, saw at a glance the inherent weakness of a body whose resolutions could not even pretend to bind the legislatures of dissenting States. To cure this defect he submitted for adoption a constitution framed upon the lines of that which he had formerly designed for the Albany Convention.<sup>1</sup> It was not until a year later that Congress found time to consider the matter ; and the result of their deliberations was a constitution which began by declaring that 'each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this federation expressly delegated to the United States in Congress assembled.'<sup>2</sup> But the powers, jurisdictions, and rights which the States were to agree to confer upon Congress had all to be exercised through the agency of the States themselves. Congress might requisition men, money, or ships, but only from the States. The States were to promise to fulfil the requisitions, but the compact said nothing as to what would happen if the promises were broken. True to the principles of the Commercial System it was a frank attempt to base government on contract, which in effect 'merely defined in more precise terms the impotence of government.'<sup>3</sup> Yet, even so, Congress was unable to secure its adoption by the States till five years later, not many months before Cornwallis surrendered at Yorktown. Washington had thus no greater control of American resources than

1775.

Feb. 1781.

<sup>1</sup> See above, pp. 330-3.

<sup>2</sup> See Note C at end of this chapter, p. 653.

<sup>3</sup> Oliver, *Life of Alexander Hamilton*, p. 102.

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could be exercised through a collection of envoys who could command nothing. His position was not unlike that of an engineer commissioned to use Niagara for industrial enterprise subject to the condition that the wild beauty of the falls should not be diminished by passing any of the water through a turbine. Experience had yet to teach the Americans that the resources of men, like those of nature, are not available for great undertakings until they are harnessed.

Value of  
John  
Marshall as  
an authority.

Working of  
the co-opera-  
tive system  
described by  
Marshall.

The practical results produced by this system have been described by a contemporary of the highest authority, who took part in the war. John Marshall, one of the greatest lawyers the world has ever seen, who as Chief Justice did more than some of its authors to shape the Constitution of the United States, gives the following account of the matter in his *Life of Washington*. 'In the commencement of the war, the troops were raised entirely by the local authorities, who, without concert, established military systems of their own, and appointed officers, whose relative rank, and right of promotion, it was not very easy to adjust. The officers, like the men, were engaged only for one year, and at the expiration of that time, were to be recommissioned. Congress appointed the general officers, and took the armies raised by the respective colonies into continental pay. With considerable difficulty, a new army was formed out of these materials, in the face of the enemy, during the blockade of Boston. This work was to be repeated, with infinitely more difficulty, during the active operations of the campaign of 1776. The attention of Congress was very early called to this interesting subject by General Washington; but that body performed its most important duties through the agency of sovereign states. Those states were to nominate the officers, and were requested to send commissioners to camp to attend to this object. So many delays were

experienced, that the dissolution of the army approached, before officers were appointed to recruit that which was to take its place. At length Congress resolved that General Washington should himself be empowered to appoint the officers of those states which had failed to depute commissioners for that purpose. The manner in which appointments were made, unfortunately brought into the service, as officers, men without capacity, or sufficient weight of character to preserve the respect of the soldiers, and that discipline which is essential to an army; and the repeated re-organization of the troops gave continual discontent.

‘The various independent authorities employed in raising the army, gave occasion to other very embarrassing circumstances. In order to complete their quotas, some of the states engaged to allow those who would enlist in their service, additional pay to that promised by Congress. The discontents excited by a disparity of pay among soldiers in the same army, will readily be conceived. The interference of the general with the state governments, to produce a departure from this pernicious plan, became absolutely necessary.

‘From the same motives, some of the states gave large additional bounties. This, it was supposed by Congress, would effectually destroy the recruiting business in other states where the same liberality was not used, and therefore a resolution was passed, recommending, and insisting on a strict adherence to the precise system which had been proposed by the continental government.’<sup>1</sup>

Washington’s reiterated warnings received little attention until they were pointed by the disaster on Long Island, which, but for the criminal neglect of Howe, the vigilance of Washington could never have saved from becoming an American Sphacteria. Con-

Continued failure of Congress and the States to support Washington.

<sup>1</sup> Marshall, *The Life of Washington*, vol. iii. pp. 61-3.

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Failure of  
the States  
to respond  
to the  
requisitions  
of Congress  
to which  
they refused  
the power of  
taxation.  
Attempt of  
Congress

gress at length went so far as to propose to the States the creation of a permanent army to be enlisted for the war by the State governments each in proportion to its ability.<sup>1</sup> The continental levy, however, was largely a failure, and of the 66,000 men voted by Congress not 16,000 were brought into the field.<sup>2</sup> 'Few were found who would engage voluntarily in the service, and coercion was an expedient attended with too much hazard to be extensively employed. Apprehensions of danger were entertained, from forcing men into the army for three years, or during the war; and the vacant ranks were scantily supplied with drafts, for nine, twelve, and eighteen months. The evil therefore still continued; and except that the old officers remained, almost a new army was to be raised for every campaign. The commander-in-chief, always provident for the future, was uniformly earnest in his representations to Congress, and to the several states, on this important subject. His letters continually and urgently pressed them to take timely measures for supplying the places of those who were leaving the service. But the means adopted were so much more slow and ineffectual in their operation than was expected by those who devised them, that the season for action never found the preparations of America completed; and the necessity of struggling against superior numbers was almost perpetual.'<sup>3</sup>

As Washington saw, the Americans were sacrificing the real military advantage which they had over the British in waging a war on their own soil. America was capable of producing forces strong enough to overwhelm any which Britain could transport across the Atlantic; but at this stage of the contest the advantages of numbers in the field were nearly

<sup>1</sup> See note A at end of this chapter, p. 648.

<sup>2</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 422.

<sup>3</sup> Marshall, *The Life of Washington*, vol. iv. pp. 51-2.

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to depend  
upon paper  
money and  
loans. Its  
inevitable  
failure.

always on the side of the British. Some assemblies were offering bounties to all who would enlist in their local militia and were outbidding the officers recruiting for Washington; so he urged Congress to offer recruits sufficient pay to induce enlistment in the American army.<sup>1</sup> Congress, however, had found that money was even harder to come by than men; for the assemblies were no more willing to share the power of taxation with a Congress of their own delegates than they were with a Parliament elected in Britain. The American taxpayer had been trained to think that all the money he contributed must as a matter of course be spent within the limits of his own colony. Not till the war had been five years in progress did the assemblies make any serious attempt to impose taxation in order to meet requisitions of Congress. That body resorted meantime to the issue of continental notes, and pledged the faith of the States for its redemption. But no sooner was the paper issued than it began to depreciate, until it stood at one-fortieth of its face value. In the expression 'not worth a continental' its epitaph remains engraved upon the language of modern America. Such being the condition of its credit, Congress found that it was impossible to raise a loan.

Accustomed to look to an older community to pay them for beating their own enemies, the Americans now turned to Europe. The formal alliance with France was not made till 1778, nor that with Spain till 1779, but in 1776 both granted them 1,000,000 livres, which enabled Congress to purchase 250 cannon, and arms and clothing for 30,000 men. In the opinion of Lecky, 'it is not too much to say that it was the intervention of France that saved the cause,'<sup>2</sup> and to the end the war was largely financed

Dependence  
of Congress  
on France  
and Spain  
for the funds  
necessary  
for the war.

<sup>1</sup> Marshall, *The Life of Washington*, vol. ii. pp. 553-66.

<sup>2</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 402.

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by France. But, as Washington found, French support at once relaxed the energies of a people demoralized by the English colonial system. 'Congress relying upon it grew more and more into the character of a mere agent of the states for issuing paper and borrowing money.'<sup>1</sup>

Command of  
New Jersey  
recovered by  
Washington,  
Jan. 1777.

The incurable sloth of Sir William Howe made it possible for Washington and a handful of heroic followers to save American society from its own disorders. Their task was facilitated by the conduct of the Hessians quartered in New Jersey, who, knowing no English and unable to discriminate between friend and foe, plundered loyalists and republicans alike. In a few weeks the whole country was reduced to a frenzy of hostility. Washington, finding that the enemy made no attempt to cross the Delaware, recrossed it himself and surprised the German garrison in Trenton. Evading Cornwallis, he beat a British force at Princeton and recovered the mastery of the greater part of New Jersey.

Washington  
defeated  
at Brandy-  
wine, Sept.  
11, 1777.  
Philadelphia  
taken and  
held by  
Howe.

By using their fleet the Howes might at any moment have threatened Washington's rear. But the summer of 1777 was far spent before Sir William could rouse himself to action, and it was not till August that he sailed up Chesapeake Bay and landed at Elkhead. Washington endeavoured to hold the line of the Brandywine River, but was defeated there on September 11. On the 26th the British entered Philadelphia, and Sir William proceeded to cover that position by occupying Germantown, a hamlet where roads crossed some ten miles to the North of the Pennsylvanian capital. Washington, hoping once more, as at Trenton, to snatch a victory on the morrow of defeat, attacked him there on October 4,

<sup>1</sup> Alexander Johnston, *Ency. Brit.* 9th ed. vol. xxiii. p. 744. See also Marshall, *The Life of Washington*, vol. iv. pp. 50-7; and Lodge, *George Washington*, vol. i. pp. 234, 249.



but through failure of his ammunition was unable to carry the post. That night Sir William lost the last chance which fortune gave him of destroying Washington and his army.

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His laziness, however, was scarcely more fatal to the British cause than the desire of Lord George Germaine in London to emulate the achievements of Chatham. The Americans had attacked Quebec at the opening of the war, but had been repulsed with disaster by the Governor, Sir Guy Carleton, and driven from the province. Germaine, who resembled Chatham in nothing but his ambition, had a grudge against Carleton, and sent Burgoyne to take over from him the command of the troops in Canada. Together the minister and his general conceived the idea of cutting off New England from the rest of America by the junction of two forces moving simultaneously, the one led by Burgoyne southwards down Lake Champlain, the other to be despatched by Howe northwards from New York up the Hudson river. Unfortunately for Burgoyne, Germaine failed to secure that the despatches explaining his part in the movement reached Howe before he had left New York, and was involved in his movement on Philadelphia. Burgoyne, unsupported from the South, was overpowered by numbers and surrendered to Gates at Saratoga on October 16 with 3500 men. On hearing the news, France at once entered into the alliance with the United States which eventually enabled the allies to wrest from Britain her control of the sea.

Surrender of  
Burgoyne at  
Saratoga,  
Oct. 16,  
1777.  
Alliance of  
France with  
the United  
States the  
immediate  
result.

June 1776.

The darkest years, however, in the history of the American Commonwealth had still to be faced. While Sir William Howe was settling down in Philadelphia for another comfortable winter, Washington was felling trees and establishing cantonments at Valley Forge, twenty miles to the North-west. There

The con-  
tinental  
army  
virtually  
abandoned  
by Congress  
at Valley  
Forge.

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he was able to keep in touch with Congress, which had fled to Lancaster, some forty miles beyond his camp. The claims of service in the field and abroad had now deprived that body of most of its best men, and Washington alone stood between the American cause and its final destruction. 'The misconduct or inefficiency of the commissaries appointed by the Congress, and the general disaffection of the people, had reduced the revolutionary forces to a degree of misery that almost led to their destruction. On one occasion they were three successive days without bread. On another, they were two days entirely without meat.' On a third, it was announced that there was not in the camp "a single hoof of any kind to slaughter, and not more than twenty-five barrels of flour." There was no soap or vinegar. "Few men" had "more than one shirt, many only the moiety of one, and some none at all"; and, besides a number of men confined in hospitals or farmers' houses for want of shoes, there were on a single day 2,898 men in the camp unfit for duty because they were "barefoot and otherwise naked." In the piercing days of December, numbers of the troops were compelled to sit up all night around the fire, having no blankets to cover them, and it became evident that unless a change quickly took place the army must either "starve, dissolve, or disperse, in order to obtain subsistence in the best manner they can." In three weeks of this month the army, without any fighting, had lost by hardship and exposure near 2,000 men. So large a proportion of the troops were barefoot that "their marches might be traced by the blood from their feet." Yet week after week rolled on, and still, amid unabated sufferings, a large proportion of those brave men held together and took up their winter quarters, diminished indeed in numbers, and more than once defeated in the field, but still un-

broken and undismayed, within a day's march of a greatly superior army of British soldiers.

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'The time was, indeed, well fitted to winnow the chaff from the grain; and few braver and truer men were ever collected around a great commander than those who remained with Washington during that dreary winter in Valley Forge, some twenty miles from Philadelphia. "For some days past," wrote their commander on February 16, 1778, "there has been little less than a famine in the camp; a part of the army has been a week without any kind of flesh, and the rest three or four days. Naked and starving as they are, we cannot enough admire the incomparable patience and fidelity of the soldiery, that they have not been ere this excited by their sufferings to a general mutiny and dispersion. Strong symptoms, however, of discontent have appeared in particular instances, and nothing but the most active efforts everywhere, can long avert so shocking a catastrophe." Many, indeed, fell away. "No day, nor scarce an hour passes," wrote Washington in December, "without the offer of a resigned commission." Many fled to the country and to their friends, and not less than 3,000 deserters came from the American camp to the British army at Philadelphia.'<sup>1</sup>

Congress was distracted by jealousy of Washington. Nothing but personal devotion to their leader had availed to keep an heroic remnant faithful to their cause. The writer of an anonymous letter to the President of Congress averred that the Americans were making a man their God, and that no good could be expected from the army until Baal and his worshippers were banished from the camp. John and Samuel Adams denounced the sin of 'idolatry,' and hinted that the freedom of America was now imperilled by a military despotism. Congress,

Failure of intrigue in Congress to supersede Washington by Gates as Commander-in-Chief. General demoralization of public opinion.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 425-7.

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meanwhile, was calling upon Washington to hurl the army, which they would neither clothe, shoe, nor feed, against the lines behind which Howe was entrenched in Philadelphia: His refusal to lead his men to certain destruction provoked the often reiterated taunt that he was trying to imitate Fabius to the ruin of the American cause. An intrigue was set on foot to transfer the supreme command from Washington to Gates, the nominal victor of Saratoga. Gates was brought down from the North to preside over the Board of War. Conway, his accomplice, was appointed Inspector-General. 'Notorious and implacable hostility to the Commander-in-Chief of the national forces was recognised as the special qualification for every office the holder of which would be in a position to annoy and thwart him.'<sup>1</sup> Washington, however, declined to be driven into any false step and bided his time until he was able to end the intrigue by exposing it.

Howe superseded by Clinton, whom Washington was unable to crush till the French fleet dominated the sea. Surrender of Cornwallis at Yorktown, Oct. 19, 1781.

In May 1778 Sir William Howe was at length recalled, and Clinton, who took his place, abandoned Philadelphia and retreated to New York. It is needless, however, to follow the confused and ineffectual operations by which any decisive result was postponed for another three years and a half. For the purpose of this chapter it will suffice to inquire why the result was so long postponed. The French admiral failed to co-operate with Washington by using the superior strength of his fleet to destroy the British control of the sea. Clinton failed to use the breathing space afforded him by the French admiral to destroy the nucleus of continental action which existed so long as Washington and his army were in being. Encouraged by the fact that an increasing number of loyalists, especially in the South, were now taking the field, he dissipated his strength by

<sup>1</sup> Trevelyan, *The American Revolution*, vol. iv. p. 310.

attempting to conquer the country in detail. So long, however, as he retained the power of moving his troops by sea, and of preventing his enemy from doing so, the incompetence of Congress combined with the selfishness of the States to deny Washington the means of crushing him.<sup>1</sup> Resourceful as he was, the American leader could do no more than keep some kind of army in existence with the help of French troops and money. It was not till 1781 that the French fleet really began to assert its power. By menacing New York it induced Clinton to withdraw a portion of the force which was operating under Cornwallis in Virginia against the French troops under Lafayette. Cornwallis was ordered by Clinton to entrench himself at Yorktown on one of the narrow tongues of land which extend from the coast of Virginia into the Southern waters of Chesapeake Bay. The British fleet, however, which was sent under Admiral Graves to support Cornwallis was outmatched by De Grasse at the mouth of Chesapeake Bay, and returned to New York to refit. Washington, having collected all the French and American troops he could lay hands on, led Clinton to believe that he was preparing to attack him on the Hudson estuary. Too late Clinton discovered that his antagonist was hurrying South by forced marches to Elkhead and Baltimore, where transports were waiting which enabled him to unite with Lafayette in the blockade of Yorktown. The final attack was led by Alexander Hamilton, and on October 19, 1781, Cornwallis with 7000 men surrendered his troops to the Americans and his seamen and ships to the French.

It must be recalled that since 1780 Britain had been at war with France, Spain, and Holland, while Denmark, Sweden, and Prussia were leagued to assert their claim to send supplies to the Americans.

Reasons for  
the great  
protraction  
of the war.

<sup>1</sup> See Note B at end of this chapter, p. 650.

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Hyder Ali was threatening Madras, and in Ireland the Protestants were demanding the independence of their Parliament with arms in their hands. In America Britain had succeeded in finding no general of average capacity to command her forces. From the outbreak of war the machinery of government in every one of the thirteen States had been in the hands of the revolutionary party, who had at their disposal a strategist incomparably superior to any that were opposed to him, one whose devotion to their cause was equalled only by his power for inspiring others. This master of organization, with a genius for managing men, took over six years from the date of his first appointment to beat on American soil the incompetent generals of a country fighting from 3000 miles away and threatened by the ever-gathering hostility of Europe. And when he did so, it was only with the aid of a French army and fleet and French money to pay his American troops, of which not half, according to one contemporary, were American-born.<sup>1</sup> Without Washington the American cause could never have been saved, even by the negligence of the British Government and their generals. The real problem, indeed, is why he was so painfully slow in ending the war.

The  
condition  
of society  
in America  
as seen by  
Washington.

The explanation is to be found in the condition of American society as seen and recorded by Washington himself. 'If I were to be called upon,' he wrote at the close of 1778, 'to draw a picture of the times and of men, from what I have seen, heard, and in part know, I should in one word say, that idleness, dissipation, and extravagance seems to have laid fast hold of most of them; that speculation, speculation, and an insatiable thirst for riches seems to have got the better of every other consideration, and almost of every order of men; that party disputes and personal

<sup>1</sup> See above, Galloway's evidence, p. 416.

quarrels are the great business of the day ; while the momentous concerns of an empire, a great and accumulating debt, ruined finances, depreciated money, and want of credit, which in its consequences is the want of everything, are but secondary considerations, and postponed from day to day, from week to week, as if our affairs wore the most promising aspect. . . . Our money is now sinking fifty per cent. a day in this city ; and I shall not be surprised if, in the course of a few months, a total stop is put to the currency of it ; and yet an assembly, a concert, a dinner, or supper will not only take men off from acting in this business, but even from thinking of it, while a great part of the officers of our army, from absolute necessity, are quitting the service, and the more virtuous few, rather than do this, are sinking by sure degrees into beggary and want.' <sup>1</sup> As in the previous war, American producers were finding that it was more profitable to feed their enemies than their friends. 'While our Nov. 7, 1780. army,' he writes, 'is experiencing almost daily want, that of the enemy in New York is deriving ample supplies from a trade with the adjacent States of New York, New Jersey, and Connecticut, which has by degrees become so common, that it is hardly thought a crime. It is true there are, in those States, laws imposing a penalty upon this criminal commerce ; but it is so light or so little attended to, that it does not prevent the practice. The markets of New York are so well supplied, that a great number of mouths, which would otherwise be fed from the public magazines, are now supported upon the fresh meats and flour of the country, by which means the enemy have been often enabled to bear the disappointments of the arrival of their provision fleets without much inconvenience ; and, if report be true, they would at this

<sup>1</sup> Washington to Benjamin Harrison, Philadelphia, December 30, 1778. *Writings*, vol. vi. pp. 151-2.

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very time experience distress for the want of their long expected Irish fleet, if the resources of the country were effectually cut off from them. This cannot be done by military measures alone, except in cases of blockade or siege, and much less will it be in my power to do it with our army in the weak state it is verging to. I believe that most nations make it capital for their subjects to furnish their enemies with provisions and military stores during a war. Were this done by the several States, and the laws rigidly put in execution in a few instances, the practice would be stopped.'<sup>1</sup> A month later he was obliged to discharge part of his army in order to feed the rest.<sup>2</sup> One last touch was needed to complete the experiences of the Seven Years' War. When the year 1781 opened with a threat of invasion from Canada, New York and Vermont were involved in a local dispute, and were actually preparing for civil war in the probable field of Washington's campaign.<sup>3</sup>

Corroborative evidence of other contemporaries.

The strictures of Washington on American society are amply supported by others who were able to view it from within. When Adams complained to his wife that Toryism was reported to be rife in Boston, she replied that the mischief was deeper and more widely spread. 'It is a spirit of avarice and contempt of authority, an inordinate love of gain, that prevails not only in town but everywhere I look or hear from.'<sup>4</sup> To the same effect is the letter of a French engineer captured at sea in 1778. 'Each State,' he writes, 'is jealous of the other. The spirit of enthusiasm in defence of liberty does not exist among them; there is more of it for the support of America in one coffee-house in Paris than is to be found in the whole continent. The Americans are

<sup>1</sup> Washington, *Writings*, vol. vii. pp. 286-7.

<sup>2</sup> *Ibid.* p. 321.

<sup>3</sup> See above, pp. 326-7.

<sup>4</sup> *Familiar Letters*, p. 261. Quoted by Lecky, *England in the Eighteenth Century*, vol. iv. p. 423.



averse to war from a habit of indolence and equality.’<sup>1</sup> The testimony of another French officer shows how the American cause was subsisting solely on the patriotism of a strenuous handful. ‘The spirit of patriotism,’ wrote Count Fersen at this time, ‘is only to be found amongst the leading men of the country, who make tremendous sacrifices. The rest, and they are the great majority, think only of their personal interest. . . . Those near the coast convey to the English fleet anchored in Gardiner’s Bay all kinds of provisions, and that because they are highly paid; ourselves they fleece pitilessly. . . . In all the transactions we have had with them they treat us more as enemies than as friends. They are incredibly grasping.’<sup>2</sup>

There was thus no public opinion strong enough to override the jealousy of the local assemblies, and compel them to concede to an American assembly the powers necessary for the handling of American affairs. Men like Otis and Adams had been right in denying the claim of the British to tax the American electorate. But as soon as the controversy had drifted into war, and the States were called upon to support their contention with funds, the real motive of the popular objection began to appear. The colonial democracies had never been trained to submit to anything but provincial taxation, the revenues from which could be spent within their own territories and amongst themselves. It was not till the war had lasted more than three years that the assemblies could bring themselves to levy, or that their constituents would tolerate, any serious taxation to meet the expenses of Washington’s army.<sup>3</sup>

Evidence  
that  
Americans  
had been less  
averse to  
taxation by  
Parliament  
than to  
taxation  
itself.

<sup>1</sup> *Lansdowne Papers*, British Museum, Add. MSS. 2431, p. 29, quoted by Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 483.

<sup>2</sup> *Lettres de Comte Fersen*, vol. i. p. 51. Quoted by Lecky, *History of England in the Eighteenth Century*, vol. v. p. 54.

<sup>3</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. p. 483. See also Bolles, *Financial History of the United States*, chap. xiv.

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Incoherent  
condition  
of the  
American  
government  
and its  
direct result  
in the dis-  
organization  
of the  
American  
army.

Throughout the war the assemblies were almost as jealous of their own joint committee as previously they had been of the Imperial Government. Congress was practically limited to the functions of a conference, which could frame schemes and request thirteen governments to give effect to them in detail. But the intended effect of such measures was destroyed and impaired by the impotence of Congress to secure that thirteen assemblies would each and all play their respective parts, play them in time and play them to the full. The quota of troops due from each was seldom if ever completed. It was never recruited in time, and the men were sent into the field raw and untrained. But worse still, the dates of recruitment indicated by Congress were ignored. The result was 'that the terms of service of different portions of the army expired almost every month in the year, and raw troops, unacquainted with the first rudiments of military duty, were introduced in the most critical moments of a campaign. . . . Timely and correspondent measures . . . had been continually recommended, and the recommendation had been as continually neglected.'<sup>1</sup> In a letter written to the President of Congress, Washington shows how chaos in the system of government was inevitably reflected in every detail of the military administration. 'The system of State supplies,' he writes, 'however in the commencement dictated by necessity, has proved in its operation pernicious beyond description. An army must be raised, paid, subsisted, and regulated upon an equal and uniform principle, or the confusions and discontents are endless. Little less than the dissolution of the army would have been long since the consequence of a different plan, had it not been for a spirit of patriotic virtue, both in officers and men, of which there are few examples, seconded by

<sup>1</sup> Marshall, *The Life of Washington*, vol. iv. pp. 174-5.

the unremitting pains that have been taken to compose and reconcile them to their situation. But these will not be able to hold out much longer against the influence of causes constantly operating, and every day with some new aggravation. .

‘Some States, from their internal ability and local advantages, furnish their Troops pretty amply, not only with cloathing, but with many little comforts and conveniences; others supply them with some necessaries, but on a more contracted scale; while others have it in their power to do little or nothing at all. The officers and men in the routine of duty mix dayly and compare circumstances. Those, who fare worse than others, of course are dissatisfied, and have their resentment excited, not only against their own State, but against the Confederacy. They become disgusted with a service that makes such injurious distinctions. No arguments can persuade an officer it is justice he should be obliged to pay £— a yard for cloth, and other things in proportion, while another is furnished at part of the price. The officers resign, and we have now scarcely a sufficient number left to take care even of the fragments of corps which remain. The men have not this resource. They murmur, brood over their discontents, and have lately shown a disposition to enter into seditious combinations.’<sup>1</sup> The difficulty of recruiting was greatly increased by the fact that in matters of pay some States treated their men less generously than others. There was, he added, no remedy for such evils until military affairs were entrusted to the sole administration of one central body adequately equipped with the necessary powers. The situation as a whole was exhibited by Washington in a famous image when he compared America to ‘a clock, each state representing some one or other of the smaller

<sup>1</sup> Evans, *Writings of American Statesmen—Washington*, pp. 145-6.

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parts of it, which they are endeavouring to put in fine order, without considering how useless and unavailing their labour is, unless the great wheel, or spring, which is to set the whole in motion, is also well attended to and kept in good order.’<sup>1</sup>

Efforts of Washington to redress by his personal efficiency the essential defects of the political system.

Oct. 1779.

Americans had yet to learn the lessons which were to make it possible for Washington to revise the mechanism of their government, and it was saved from destruction in the meantime only by an excess of efficiency on the part of the great leader himself. Again he elaborated a scheme for the reform of the army, and was pressing it upon Congress and the State legislatures, only to demonstrate once more the hopelessness of measures which depended for their efficacy on the equal and simultaneous action of independent authorities. ‘The difficulty of bringing about a harmony and concert of measures among thirteen sovereign states was too great to be surmounted.’<sup>2</sup> The administrative harvest of such a system may be seen as depicted in Washington’s own despatches. ‘Instead of having magazines filled with provisions, we have a scanty pittance scattered here and there in the different states. Instead of having our arsenals well supplied with military stores, they are poorly provided, and the workmen all leaving them. Instead of having the various articles of field equipage in readiness to deliver, the quarter-master general is but now applying to the several states (as the *dernier ressort*) to provide these things for their troops respectively. Instead of having a regular system of transportation established upon credit, or funds in the quarter-master’s hands to defray the contingent expences of it, we have neither the one nor the other; and all that business, or a great part of it, being done by military impressment, we are daily and hourly oppressing the people, souring their

<sup>1</sup> Marshall, *The Life of Washington*, vol. iv. p. 58.

<sup>2</sup> *Ibid.* p. 177.

tempers, and alienating their affections. Instead of having the regiments completed to the new establishment (and which ought to have been so) by the . . . of . . . , agreeably to the requisitions of Congress, scarce any state in the union has, at this hour, an eighth-part of its quota in the field; and there is little prospect that I can see of ever getting more than half. In a word, instead of having every thing in readiness to take the field, we have nothing; and instead of having the prospect of a glorious offensive campaign before us, we have a bewildered and gloomy prospect of a defensive one; unless we should receive a powerful aid of ships, land troops, and money, from our generous allies; and these at present are too contingent to build upon.’<sup>1</sup> It was, in fact, a French fleet, French auxiliaries, and French money which finally enabled Washington to bring the struggle to an issue.

In the end Washington, the most constitutionally minded of statesmen, was driven to assume the authority which the States had denied to Congress and neglected to exercise in response to its demands. Failing to obtain revenue from the States, Congress had at last requested them to furnish supplies in kind, but ‘to such a degree had these requisitions been neglected, as to excite the apprehension that, at every station, the soldiers must be disbanded from the want of food.’<sup>2</sup> Rather than see his soldiers starve or disperse, he proceeded to levy the supplies he needed for their maintenance from the people themselves. But in resorting to arbitrary power he handled it with the care of a doctor administering strychnine, who spares no precaution against poisoning himself and his assistants as well as the patient. His exactions were carefully systematized, restricted within the narrowest bounds, safeguarded against

Washington at length driven to take upon himself the right denied to Congress of levying supplies from individuals.

1780.

<sup>1</sup> Marshall, *The Life of Washington*, vol. iv. pp. 503-4.

<sup>2</sup> *Ibid.* p. 504.

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Growth in  
the army of  
discontent  
with the  
civil  
authority.

abuse and accurately explained in letters circulated to the magistrates.<sup>1</sup> That so many years spent as the military leader of a revolution should have left his respect for law undiminished is one of the marvels of history, and marks Washington as the supreme product of Anglo-Saxon civilization. But in principle he had at length been driven to the same resort as Grenville, when, after waiting in vain for the assemblies to impose taxation, he had passed the Stamp Act and proceeded to levy it over their heads.<sup>2</sup>

Unlike Grenville, however, Washington in his army possessed the means of collecting his requisitions. The States by their negligence had compelled him to employ treatment which in hands less steadfast than his own would have paralysed the liberties of the nascent Commonwealth. It was with the utmost difficulty that he was able to restrain the growing resentment of his army with Congress. Repeatedly he had urged that body to make some adequate provision for the payment and pensions of their officers. After trifling with the question for several years Congress recommended the soldiers to the attention of their several States. An indignant remonstrance from the general officers 'was answered by Congress with a reference to what had been already done, and a declaration "that patience, self-denial, fortitude, and perseverance, and the cheerful sacrifice of time and health, are necessary virtues, which both the citizen and soldier are called to exercise, while struggling for the liberties of their country; and that moderation, frugality and temperance, must be among the chief supports, as well as the brightest ornaments, of that kind of civil government which is wisely instituted by the several states in this union."

'It may well be supposed,' as Marshall drily

<sup>1</sup> Marshall, *The Life of Washington*, vol. iv. pp. 244-5.

<sup>2</sup> See above, p. 346.

remarks, 'that this philosophic lecture on the virtues of temperance, to men who were often without food, and nearly half their time with a very limited supply of it, was but ill calculated to assuage the irritations fomented by the neglect which was believed to have been sustained.'<sup>1</sup>

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At length the Pennsylvania line broke into open mutiny and threatened Congress itself. The Government of Pennsylvania lost its nerve and patched up a settlement with their own men on lines which simply emphasized the grievances of those from other States. The immediate result was a mutiny in the New Jersey contingent which Washington was able to suppress only by hanging two of the ringleaders.

Mutiny of  
the Pennsylvanian  
contingent  
repressed by  
Washington,  
Jan. 1781.

For the moment Congress and the States were frightened into some kind of activity, and began to devise effective measures of taxation. In a few months, however, the war was practically closed by the surrender of Cornwallis, and the American army had leisure in which to reflect on its grievances. 'The history of the war,' wrote Washington, 'is a history of false hopes and temporary expedients. Would to God they were to end here.'<sup>2</sup> Events were presently to justify his fears. Congress had granted the officers half-pay for life, but the States, ignoring its requisitions, had left the officers unpaid. The unfriendliness of Congress itself showed what kind of justice the defenders of their cause might look for as soon as they were disbanded and could no longer demand it by force of arms.<sup>3</sup> An address was now circulated amongst the officers, urging the Commander-in-Chief to compel the payment of their arrears. After censuring the violence of its terms he agreed to discuss another which was quieter in tone, remark-

Washington's refusal  
to accept  
monarchical  
power.  
Oct. 1781.

Oct. 1780.

<sup>1</sup> Marshall, *The Life of Washington*, vol. iv. p. 365.

<sup>2</sup> Lodge, *George Washington*, vol. i. p. 286.

<sup>3</sup> Marshall, *The Life of Washington*, vol. iv. p. 641.

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ing as he took out his glasses to read the notes he had made for his reply, 'You see, gentlemen, I have grown both blind and grey in your service.' For the moment his authority with his officers, combined with his tact in using it, availed to repress the movement. But their belief in the ultimate principles for which they had fought was fatally shaken, and their minds were beginning to seek a cure for the impotence of Congress in some form of monarchy. Two months later Colonel Nicola, an old and respected friend of Washington, undertook to convey their ideas to him and invited him in a forcible and well-written letter to assume to himself the sovereignty of the State. Once more, however, the movement was checked by the firmness and tact of Washington's reply. 'With a mixture of surprise and astonishment, I have read with attention the sentiments you have submitted to my perusal. Be assured, sir, no occurrence in the course of the war has given me more painful sensations than your information of there being such ideas existing in the army as you have expressed and [which] I must view with abhorrence and reprehend with severity. For the present, the communication of them will rest in my own bosom, unless some further agitation of the matter shall make a disclosure necessary. I am much at a loss to conceive what part of my conduct could have given encouragement to an address which seems to me big with the greatest mischiefs that can befall my country. If I am not deceived in the knowledge of myself, you could not have found a person to whom your schemes are more disagreeable. At the same time, in justice to my own feelings, I must add that no man possesses a more sincere wish to see justice done to the army than I do; and as far as my power and influence in a constitutional way extend, they shall be employed to the utmost of my abilities to effect it, should there be any occasion.



Let me conjure you, then, if you have any regard for your country, concern for yourself or posterity, or respect for me, to banish these thoughts from your mind, and never communicate, as from yourself or any one else, a sentiment of the like nature.’<sup>1</sup>

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Congress, now thoroughly frightened, offered to commute the half-pay for life into a lump sum equal to five years’ full pay. Such, indeed, was the general alarm which the army had aroused in the minds of the politicians that nine States actually endorsed the resolution of Congress. ‘But,’ as Marshall remarks, ‘the value of this resolution depended on the success of requisitions, and of applications to the respective states to place permanent funds in the power of Congress.’<sup>2</sup> In other words, it had no value at all, and Washington warned Congress that they were treading a path which could lead only to a military revolution.<sup>3</sup> The one alternative was to create some government competent to redeem as well as to contract obligations.

Undertaking of Congress and the States to liquidate the claims of the army nullified by the subsequent failure of the States to supply the funds.

Oct. 1782.

More acutely than any of his comrades-in-arms he realized the general poverty of spirit, but unlike them he never would acquiesce in the conclusion that it was incurable. He always acted as though time and the discipline of facts would evoke the patriotism necessary for self-government, even at moments when his letters show that he almost despaired. To a mind like his it was no real achievement on the part of Americans to have renounced the authority of the British Parliament unless they could establish in its place a genuine government of their own, and one based on the principle of the commonwealth. No offer of a crown could blind him to the fact that autocracy was the merest confession of failure, and

Steadfastness of Washington in refusing to abandon the ideal of creating an American Commonwealth.

<sup>1</sup> Lodge, *George Washington*, vol. i. pp. 329-30.

<sup>2</sup> Marshall, *The Life of Washington*, vol. iv. p. 666.

<sup>3</sup> Lodge, *George Washington*, vol. i. p. 326.

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one which he was resolved never to accept. But facts had taught him that for a commonwealth to exist there must be in it a sovereignty just as final as that of an autocrat. Co-operation, or 'influence,' as he called it, was not government but merely anarchy disguised as such. Throughout the long-drawn agony of the war no one had laboured more patiently than himself to make the best of co-operation. But he saw not only that it had failed, but why. He saw that it must fail not only in war but in peace, because he had grasped the principles which must be realized before any system of self-government can hope to succeed. Those principles, as he saw, must be actualized in a definite and concrete machinery. A statesman greater than Cromwell, immeasurably greater than Napoleon, it was this in him which has rendered his papers a mine of political wisdom, richer than any to be found in theirs. Washington was that rarest of men who,

Through the heat of conflict, keeps the law  
In calmness made, and sees what he foresaw.

Contact with facts and its gradual effect in enlightening the public mind. Washington's task in pointing the lesson while securing the time within which it could be learned.

The narrative in the previous pages will suffice to show how the Revolution had brought the colonial democracies into contact with the facts. Experience was repairing the mischief of the colonial system by schooling them to the realities of political life. The formation of Congress before the war was an invaluable step if only because it created a point of observation from which some representatives from each State could view the needs of America as a whole. Throughout the war the silent force of facts was working a gradual change in the minds of Congress and the public at large. The weight of the invertebrate Commonwealth was resting meantime on the shoulders of one steadfast man, who none the less found time to explain the source of its weakness,

to indicate the cure, and press for its application. Writing to a member of Congress, he says: 'Certain I am, unless Congress speak in a more decisive tone, unless they are vested with powers by the several States competent to the great purposes of war, or assume them as matter of right, and they and the States respectively act with more energy than they hitherto have done, that our cause is lost. We can no longer drudge on in the old way. By ill timing the adoption of measures, by delays in the execution of them, or by unwarrantable jealousies, we incur enormous expenses and derive no benefit from them. One State will comply with a requisition of Congress; another neglects to do it; a third executes it by halves; and all differ either in the manner, the matter, or so much in point of time, that we are always working up hill, and ever shall be; and, while such a system as the present one, or rather want of one prevails, we shall ever be unable to apply our strength or resources to any advantage. This, my dear Sir, is plain language to a member of Congress; but it is the language of truth and friendship. It is the result of long thinking, close application, and strict observation. I see one head gradually changing into thirteen. I see one army branching into thirteen, which, instead of looking up to Congress as the supreme controlling power of the United States, are considering themselves as dependent on their respective States. In a word, I see the powers of Congress declining too fast for the consideration and respect, which are due to them as the great representative body of America, and I am fearful of the consequences.'<sup>1</sup>

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May 1780.

Again he returns to his point a month later. July 1780. 'To these fundamental errors, may be added another which I expect will prove our ruin, and that is the

<sup>1</sup> Evans, *Writings of American Statesmen—Washington*, pp. 157-8, note.

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relinquishment of Congressional powers to the States individually—all the business is now *attempted*, for it is not done, by a timid kind of recommendation from Congress to the States; the consequence of which is, that instead of pursuing one uniform system, which in the execution shall correspond in time and manner, each State undertakes to determine :

‘ 1st. Whether they will comply or not.

‘ 2nd. In what manner they will do it, and

‘ 3d. In what time—by which means scarcely any one measure is, or can be executed, while great expences are incurred and the willing and zealous States ruined. In a word our measures are not under the influence and direction of one council, but thirteen, each of which is actuated by local views and politics, without considering the fatal consequences of not complying with plans which the united wisdom of America in its representative capacity have digested, or the unhappy tendency of delay, mutilation or alteration. I do not scruple to add, and I give it decisively as my opinion—that unless the States will content themselves with a full and well-chosen representation in Congress and vest that body with absolute powers in all matters relative to the great purposes of war, and of general concern (by which the States unitedly are affected, reserving to themselves all matters of local and internal polity for the regulation of order and good government) we are attempting an impossibility, and very soon shall become (if it is not already the case) a many-headed monster—a heterogenous mass—that never will or can steer to the same point. The contest among the different States *now* is not which shall do most for the common cause—but which shall do least, hence arise disappointments and delay, one State waiting to see what another will or will not do, through fear of doing too much, and by their deliberations, altera-

tions, and sometimes refusals to comply with the requisitions of Congress, after that Congress spent months in reconciling (as far as it is possible) jarring interests, in order to frame their resolutions, as far as the nature of the case will admit, upon principles of equality.’<sup>1</sup>

These letters were written before the States had ratified the Articles of Confederation proposed by Congress. The mere adoption of a constitution which formally recognized the essential unity of American interests was a step of no little importance. ‘It is not impossible,’ says Marshall, ‘that had peace been restored to America before any agreement for a permanent union was entered into, the different parts might have fallen asunder, and an entire dismemberment have taken place.’<sup>2</sup> Otherwise this instrument was valuable only as proving the incurable weakness of any government not vested with legal authority over the persons and purses of the citizens themselves.<sup>3</sup>

‘To the judicious patriots throughout America, the necessity of giving greater powers to the federal head became every day more apparent. The mutiny of so large a portion of the army, and the continuance of the causes which produced that mutiny, manifested the impracticability, in point of fact, of continuing the war much longer, if the resources of the country were entirely controlled by thirteen independant sovereignties.’<sup>4</sup>

The system was one which penalized efficiency, for the action of some States was invariably neutralized by the slackness of others. ‘It is,’ wrote Washington, ‘perhaps the greatest of the great evils attending this contest, that States as well as individuals had rather wish well, than act well; had

The Articles of Confederation ratified Feb. 1781. Value of their adoption as a step towards a genuine Union.

Growing perception of the futility of these Articles.

<sup>1</sup> Evans, *Writings of American Statesmen—Washington*, pp. 156-7.

<sup>2</sup> Marshall, *The Life of George Washington*, vol. iv. p. 473.

<sup>3</sup> *Ibid.* p. 501.

<sup>4</sup> *Ibid.* p. 464.

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March 31,  
1783.

rather see a thing done, than do it, or contribute their just proportion to the doing it. This conduct is not only injurious to the common cause, but in the end most expensive to themselves; besides the distrusts and jealousies, which are sown by such conduct. To expect brick without straw is idle, and yet I am called upon, with as much facility to furnish men and means for every service and every want, as if every iota required of the States had been furnished, and the whole was at my disposal; when the fact is, I am scarcely able to provide a garrison for West Point, or to feed the men that are there. This, and ten thousand reasons, which I could assign, prove the necessity of something more than commendatory powers in Congress. If that body is not vested with a controuling power in matters of common concern, and for the great purposes of war, I do not scruple to give it decidedly as my opinion, that it will be impossible to prosecute it to any *good effect*. Some States are capitally injured if not ruined, by their own exertions and the neglects of others; while by these irregularities the strength and resources of the country never are, nor can be, employed to advantage.<sup>1</sup> His belief that such a system must fail even when peace was declared is shown in a letter addressed to Hamilton after learning that the Treaty of Paris had been signed. 'I rejoice most exceedingly that there is an end to our warfare, and that such a field is opening to our view, as will, with wisdom to direct the cultivation of it, make us a great, a respectable, and happy people; but it must be improved by other means than State politics, and unreasonable jealousies and prejudices, or (it requires not the second sight to see that) we shall be instruments in the hands of our enemies, and those European powers, who may be jealous of our greatness

<sup>1</sup> Evans, *Writings of American Statesmen—Washington*, pp. 170-1, note.

in union, to dissolve the confederation. . . . My wish to see the union of these States established upon liberal and permanent principles, and inclination to contribute my mite in pointing out the defects of the present constitution, are equally great. . . . No man in the United States is or can be more deeply impressed with the necessity of a reform in our present confederation than myself. No man perhaps has felt the bad effects of it more sensibly; for to the defects thereof, and want of powers in Congress, may justly be ascribed the prolongation of the war, and consequently the expenses occasioned by it. More than half the perplexities I have experienced in the course of my command, and almost the whole of the difficulties and distress of the army, have their origin here.’<sup>1</sup>

Those who contended that the system would work when once the enemy had been expelled from the country were soon destined to learn their mistake. The backwardness of the States in the cause of America by prolonging hostilities had increased the cost and diminished the power of the country to meet it. A vast accumulation of debt was the natural result of an experiment in levying war without taxation. The bitter experience of six years had been needed to bring Congress itself to realize that all financial measures which depended upon taxes imposed by the States were worthless. At last, in February 1781, Congress applied to the assemblies for power to levy duties, not exceeding 5 per cent on the value of imports and prize-goods. ‘Notwithstanding the greatness of the exigency, the pressure of the national wants, and the beneficial influence which a certain revenue in the hands of government would obviously have upon the war; yet never, during the existence of the confederation, did all the states unite to vest

Refusal of  
the States  
to empower  
Congress  
to levy  
customs.

<sup>1</sup> Evans, *Writings of American Statesmen—Washington*, pp. 241-2.

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The public  
debt.  
Neglect of  
the States  
to impose  
taxes in  
accordance  
with the  
Articles  
of Con-  
federation.  
Default of  
Congress.

in Congress the powers now required : so unwilling are men possessed of power, to place it in the hands of others ; and so *difficult is it to effect any objects, however important, which are dependant on the concurrent assent of many distinct sovereignties.*'<sup>1</sup>

. The close of the war had therefore left the finances of Congress in a desperate condition. On January 1, 1783, its debts were computed at \$42,000,375,<sup>2</sup> due partly to Americans who had risked their property in the national cause, partly to Dutch sympathisers, whose Government had been one of the first to recognize that of the United States. But the principal creditor was France, which had also given large sums outright and had sent the fleets and armies which had turned the scale in favour of the American cause. It is difficult to conceive conditions by which the public faith could have been more deeply pledged, but the applications of Congress to the assemblies for revenues to meet these obligations were simply ignored. 'After a short struggle so to administer the existing system as to make it competent to the great objects for which it was instituted, the effort became apparently desperate, and American affairs were impelled rapidly to a crisis, on which depended, perhaps, the continuance of the United States as a nation. . . . A government authorized to declare war, but relying on independent states for the means of prosecuting it, capable of contracting debts, and of pledging the public faith for their payment, but depending on thirteen distinct sovereignties for the preservation of that faith, could only be rescued from ignominy and contempt, by finding those sovereignties administered by men exempt from the passions incident to human nature.'<sup>3</sup> So long as a state of

<sup>1</sup> Marshall, *The Life of Washington*, vol. iv. pp. 471-2.

<sup>2</sup> This figure, of course, does not include some \$200,000,000 of paper money issued on the security of the thirteen States.

<sup>3</sup> Marshall, *The Life of Washington*, vol. v. p. 36.



actual hostilities continued, the assemblies were ruled by men who were readier to talk than to act. Peace, however, was now liberating from the ranks of the army those who had given or hazarded all for the independence of the United States. Men whose devotion to the nascent Commonwealth had its roots where patriotism ever grows were at length free to seek election in the State assemblies and some found their way to the Congress of 1783.<sup>1</sup> A committee, upon which Hamilton and Madison had found seats, prepared a scheme under which certain taxes imposed by the States were to be ear-marked for the service of the national debt.

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Appearance of Washington's soldiers in politics. Proposal to ear-mark State taxes for the service of the debt.

Hamilton, however, had no confidence in the efficacy of this scheme, for he saw clearly that any system under which Congress must depend upon the States for its revenue would assuredly fail, for the obvious reason that payment could only be enforced if Congress were prepared to make war on a defaulting State. Congress, however, could not make war without the assent of the other States, so that to enforce the payment of revenues meant that Congress had to persuade some States to make war on others. It was idle to argue that by an 'irrevocable contract' the States had plighted their word to meet the requisitions of Congress. Experience had conclusively proved that partial or total failure to meet these requisitions was the rule rather than the exception. So long as the Articles of Confederation denied the central authority all power to collect revenue from the citizens themselves, Congress could effect nothing without first inciting civil war between the component States. 'Power,' as Hamilton remarked, 'without revenue in political society is a name.'<sup>2</sup> Not merely Congress, but the American citizen himself, was placed

Futility of any scheme which denied to Congress the power to tax individuals foreseen by Hamilton.

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 39-40.

<sup>2</sup> Alexander Hamilton, *Works*, vol. i. p. 262.

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in an impossible position by this claim of the States to an exclusive power of taxation. Suppose that Congress should succeed in persuading States who had contributed their shares to coerce States who had violated the compact, what then was the duty of honest citizens in the latter who objected to national repudiation? If civil war were to follow, where was the loyalty of such citizens due? To Congress which was endeavouring to discharge, or to the State which was determined to ignore, the national obligations? If, in such a contingency, obedience was due to Congress, what then became of the claim advanced by the State to the unlimited devotion of its citizens, for nothing less than that was implied in sovereignty? Americans found themselves in the same predicament as the Ionians had done in that first fatal experiment in the structure of a counterfeit state.<sup>1</sup> The Confederation, like that of Delos, was one which imposed a dual allegiance and exacted from citizens an equivocal loyalty. It was the product of minds which had never faced the inexorable question whether the ultimate obedience of the American was due to his State or to the United States. In other words, was America to be a state at all and to acquire the stability which statehood alone can give, or was it to be no more than an alliance of sovereign states, which from its nature could not be otherwise than temporary and soluble, however loudly its founders might assert it to be permanent in the terms of the contract? If America was indeed to achieve statehood, the revolted colonies might continue as States in name but must cease to be states in fact. The right to make unlimited calls on the revenues and property of the citizens must be surrendered to the United States, and in that Commonwealth there must be some organ through which it could call upon individual

<sup>1</sup> See above, pp. 43-6.

citizens not merely to satisfy its claims, but to aid to the full extent of their lives and property in enforcing that claim on their fellow-citizens. Whether the United States could exist as a commonwealth would depend, not upon the consent of all Americans then or afterwards, but upon whether a sufficient number of Americans could be found to respond to the call. This, translated into concrete terms, meant, as Hamilton perceived, that Congress must not only be able to tax the individual citizen, but must likewise be competent to call upon him to oblige individual defaulters to pay their taxation. Its executions must issue, not against States, but individuals. Hamilton moved, therefore, in Congress, as an additional amendment to the eighth article of the Confederation, 'that the taxes, for the use of the continent, should be laid and levied separate from any other tax, and should be paid directly into the national treasury; and that the collectors respectively should be liable to an execution to be issued by the treasurer, or his deputy, under the direction of Congress, for any arrears of taxes by him to be collected, which should not be paid into the treasury in conformity with the requisitions of Congress.'<sup>1</sup>

Congress, however, was too completely the creature of the States to accept such a motion. The best that it could be got to do was to adopt in an emasculated form the committee's scheme for ear-marking taxes. This scheme was then forwarded to the States together with a report, which concluded in the following words: 'No instance has heretofore occurred, nor can any instance be expected hereafter to occur, in which the unadulterated forms of republican government can pretend to so fair an opportunity of justifying themselves by their fruits. In this view, the citizens of the United States are responsible for the greatest

The scheme adopted by Congress without Hamilton's amendment. Appeal to the States to justify the principle of the commonwealth.

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. p. 41, note.

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trust ever confided to a political society. If justice, good faith, honour, gratitude, and all the other good qualities which ennoble the character of a nation, and fulfil the ends of government, be the fruits of our establishments, the cause of liberty will acquire a dignity and lustre which it has never yet enjoyed: and an example will be set, which cannot but have the most favourable influence on the rights of mankind. If, on the other side, our governments should be unfortunately blotted with the reverse of these cardinal and essential virtues, the great cause which we have engaged to vindicate will be dishonoured and betrayed, the last and fairest experiment in favour of the rights of human nature will be turned against them, and their patrons and friends exposed to be insulted and silenced by the votaries of tyranny and usurpation.’<sup>1</sup>

Washington's public address, on resigning his office, in support of this scheme.

June 1783.

The subsequent failure of the French to justify their freedom, which in England delayed electoral reform some forty years, and in Europe led to the Holy Alliance, has since proved the gravity of this warning. The principle of the commonwealth itself was at stake, and Washington seized the occasion of his approaching resignation to review the political situation in a circular letter addressed to the State governors. ‘An indissoluble union of the States under one federal head’ was, he assured them, essential, not merely to the well-being but also to the independence of the United States. Forbearing to discuss the question whether it was necessary to enlarge the existing powers of Congress, he warned them that, unless the States suffered Congress to exercise those powers which it was supposed to possess under the Constitution, there was nothing before them but anarchy and confusion. ‘It is indispensable,’ he added, ‘to the happiness of the individual states,

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 46-7.

that there should be lodged somewhere a supreme power, to regulate and govern the general concerns of the confederated republic, without which the union cannot be of long duration. . . . It is only in our united character that we are known as an empire; that our independance is acknowledged; that our power can be regarded, or our credit supported among foreign nations. The treaties of the European powers with the United States of America will have no validity on a dissolution of the Union. We shall be left nearly in a state of nature, or we may find, by our own unhappy experience, that there is a natural and necessary progression from the extreme of anarchy to the extreme of tyranny; and that arbitrary power is most easily established on the ruins of liberty abused to licentiousness.’<sup>1</sup> By hard experience this plain Virginian gentleman had rediscovered truths enunciated by the greatest of the Greeks,<sup>2</sup> and was expressing them almost in the same words. But for his own selfless and unwearying pursuit of the ideals which he had drawn his sword to vindicate, those truths would have been verified in America, as he himself lived to see them verified in France.

Turning then to the failure of the States to fulfil the compact embodied in the Articles of Confederation, he told them plainly that their will and not their power to meet their obligations was questioned by the world, and warned them that the path which they were pursuing led straight towards moral and financial bankruptcy. ‘In what part of the continent shall we find any man, or body of men, who would not blush to stand up and propose measures purposely calculated to rob the soldier of his stipend, and the public creditor of his due?’<sup>3</sup> In this one sentence

Vital defect of the Constitution the power left to the States of paralysing it by mere inaction.

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 54-5.

<sup>2</sup> Plato, *Republic*, Book VIII. § 562.

<sup>3</sup> Marshall, *The Life of Washington*, vol. v. p. 57.

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he put his finger on the defect which vitiated the Articles of Confederation. So long as the fulfilment of their contract by the other States depended merely on the principle of co-operation, repudiation of the national liabilities could be brought about automatically, without a single member of a single assembly undertaking the odious task of proposing or defending such measures. Included in their debts, as he reminded them, was the provision which they were pledged to make for the men who had won their independence. 'That provision should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give, to the officers of the army, for services then to be performed. It was the only means to prevent a total dereliction of the service. It was a part of their hire. I may be allowed to say, it was the price of their blood, and of your independence. It is, therefore, more than a common debt; it is a debt of honour. It can never be considered as a pension, or gratuity; nor be cancelled until it is fairly discharged.'<sup>1</sup> For the non-commissioned officers and privates disabled by active service he added a special word of appeal. 'Nothing but a punctual payment of their annual allowance can rescue them from the most complicated misery; and nothing could be a more melancholy and distressing sight, than to behold those who have shed their blood, or lost their limbs, in the service of their country, without a shelter, without a friend, and without the means of obtaining any of the necessities or comforts of life; compelled to beg their daily bread from door to door. Suffer me to recommend those of this description, belonging to your state, to the warmest patronage of your excellency and your legislature.'<sup>2</sup>

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 59-60.

<sup>2</sup> *Ibid.* pp. 61-2.

He next proceeded to emphasize the absolute necessity of securing uniformity in the organization and equipment of the militia to be maintained by the States in time of peace. How hopeless it was to expect any such uniformity from the action of thirteen separate governments, no one knew better than himself, and in guarded words he went on to tell them from his own experience how little the principle of co-operation had contributed to the achievement of their independence. 'I could demonstrate, to every mind open to conviction, that in less time, and with much less expence, than has been incurred, the war might have been brought to the same happy conclusion, if the resources of the continent could have been properly drawn forth; that the distresses and disappointments which have very often occurred have, in too many instances, resulted more from a want of energy in the continental government than a deficiency of means in the particular states; that the inefficacy of measures, arising from the want of an adequate authority in the supreme power, from a partial compliance with the requisitions of Congress in some of the states, and from a failure of punctuality in others, while it tended to damp the zeal of those which were more willing to exert themselves, served also to accumulate the expences of the war, and to frustrate the best-concerted plans; and that the discouragement occasioned by the complicated difficulties and embarrassments in which our affairs were by this means involved, would have long ago produced the dissolution of any army less patient, less virtuous, and less persevering, than that which I have had the honour to command.'<sup>1</sup>

The address ended with an appeal to principles which in Washington's view were the bedrock of political society. 'I now make it my earnest prayer, that

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 63-4.

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His views on  
the ultimate  
bases of  
government.

God . . . would incline the hearts of the citizens to cultivate a spirit of subordination and obedience to government; to entertain a brotherly affection and love for one another, for their fellow-citizens of the United States at large, and particularly for their brethren who have served in the field; and, finally, that he would most graciously be pleased to dispose us all to do justice, to love mercy, and to demean ourselves with that charity, humility, and pacific temper of mind, which were the characteristics of the divine author of our blessed religion; without an humble imitation of whose example in these things we can never hope to be a happy nation.<sup>1</sup> Such were the words in which one, who for eight years had carried on his shoulders the destiny of a Commonwealth greater than any that the world had yet seen, chose to resign the charge it had laid upon him. Washington had learned in the stern school of responsibility that states are to be knit and the principle of the commonwealth is to be realized only by mutual sacrifice, not by self-interest, however intelligently realized, as exponents of the commercial system had so long proclaimed to the world.

Washington's appeal  
ignored by  
the States,  
and the  
consequent  
bankruptcy  
of Congress.

'The impression,' says Marshall, 'made by this solemn and affecting admonition could not be surpassed. The circumstances under which it was given, added to the veneration with which it was received; and, like the counsel of a parent on whom the grave is about to close for ever, it sunk deep into the hearts of all. But, like the counsels of a parent withdrawn from view, the advice was too soon forgotten, and the impression it had made was too soon effaced.

'The recommendations of Congress did not receive that prompt consideration which the public exigence demanded, nor did they meet that universal assent

<sup>1</sup> For the full text of Washington's address see Marshall, *The Life of Washington*, vol. v. pp. 48-65.



which was necessary to give them effect.’<sup>1</sup> In vain Congress continued to urge their adoption. Its requisitions, meantime, of revenues required for the national administration ‘were annually repeated, and were annually neglected. From the first of November, 1784, to the first of January, 1786, there had been paid into the public treasury only 482,897<sup>81</sup>/<sub>100</sub> dollars.’<sup>2</sup> The interest due on the public debt had been partly met from a fresh loan negotiated in Holland by Adams, but when that was gone Congress, unable to meet the interest upon it, became liable for the first instalment of the principal. Continental securities sank to one-eighth and eventually to one-tenth of their nominal value. At length the Revenue Committee reported to Congress that any reliance on requisitions as a means of discharging the engagements of the Confederacy must in future be regarded as an insult to the creditors of the Union and a danger to its peace and welfare. “Under public embarrassments,” they added, “which were daily increasing, it had become the duty to declare, most explicitly, that the crisis *had* arrived, which the people of the United States, by whose will, and for whose benefit, the federal government was instituted, must decide whether they will support their rank as a nation, by maintaining the public faith at home and abroad, or whether, for want of a timely exertion in establishing a general revenue, and thereby giving strength to the confederacy, they will hazard, not only the existence of the Union, but of those great and invaluable privileges for which they have so arduously and so honourably contended.”

Feb., 1786.

‘The revenue-system of the 18th of April, 1783, was again solemnly recommended to the consideration

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 65-6.

<sup>2</sup> *Ibid.* vol. v. p. 68. In the five years following 1781 four requisitions were ordered amounting in all to \$15,870,987, of which \$2,450,803 were paid.

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of the several states, and their unanimous and early accession to it was declared to be the only measure which could enable Congress to preserve the public faith, and to avoid the fatal evils which will inevitably flow from "a violation of those principles of justice, which are the only solid basis of the honour and prosperity of nations."'<sup>1</sup>

Agreement  
of twelve  
States to  
concede to  
Congress  
the right  
to collect  
customs,  
defeated by  
New York.

Under the system proposed in April 1783, provision had been made for a revenue sufficient to meet the obligations of the Union to the full. With this end in view it had been found necessary to propose that certain internal taxes as well as customs should be reserved to Congress. The expedient of dropping the internal taxes, which the States were most unwilling to surrender, was next tried, and in the course of the year 1786 every State but one had agreed to concede the customs. The Assembly of New York refused to comply without making certain alterations in the scheme, which were fatal to its efficacy. As the recalcitrant attitude of one State suspended the operations of the grants made by all the others, Clinton, the Governor of New York, was requested to convene the Assembly and to submit the matter to them once more. Clinton refused, 'and thus was finally defeated the laborious and persevering effort made by the federal government, to obtain from the states the means of preserving, in whole or in part, the faith of the nation.'<sup>2</sup>

Comments  
of Washing-  
ton. His  
fears and  
hopes for  
the nation.

'The private letters of that period abound with passages, shewing the solicitude with which General Washington watched the progress of this recommendation, and the chagrin with which he viewed the obstacles to its adoption. In a letter of October, 1785, he said, "The war, as you have very justly observed, has terminated most advantageously for

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 70-1.

<sup>2</sup> *Ibid.* p. 73.

America, and a fair field is presented to our view ; but I confess to you freely, my dear sir, that I do not think we possess wisdom or justice enough to cultivate it properly. Illiberality, jealousy, and local policy, mix too much in all our public councils, for the good government of the Union. In a word, the confederation appears to me to be little more than a shadow without the substance, and Congress a nugatory body, their ordinances being little attended to.—To *me* it is a solecism in politics,—indeed it is one of the most extraordinary things in nature, that we should confederate as a nation, and yet be afraid to give the rulers of that nation, who are the creatures of our own making, appointed for a limited and a short duration, and who are amenable for every action, recallable at any moment, and subject to all the evils which they may be instrumental in producing, sufficient powers to order and direct the affairs of the same. By such policy as this, the wheels of government are clogged, and our brightest prospects, and that high expectation which was entertained of us by the wondering world, are turned into astonishment ; and, from the high ground on which we stood, we are descending into the vale of confusion and darkness.

“That we have it in our power to become one of the most respectable nations upon earth admits, in my humble opinion, of no doubt ; if we would but pursue a wise, just, and liberal policy towards one another, and would keep good faith with the rest of the world. That our resources are ample and increasing, none can deny ; but while they are grudgingly applied, or not applied at all, we give a vital stab to public faith, and will sink, in the eyes of Europe, into contempt.”<sup>1</sup> Washington, however, never quite despaired of his countrymen. ‘People,’ as he said,

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 73-4.

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'must *feel* before they will *see*; consequently, they are brought slowly into measures of public utility. Past experience, or the admonition of a few, have but little weight. But evils of this nature work their own cure, though the remedy comes slower than comports with the wishes of those who foresee, or think they foresee, the danger.'<sup>1</sup>

May 1786.

'The discerning part of the community,' he wrote, 'have long since seen the necessity of giving adequate powers to Congress for national purposes, and those of a different description must yield to it ere long.'<sup>2</sup>

Stipulation of the Peace of Paris ignored by the States. Justice of Britain's refusal to evacuate American territory admitted by Jay and Washington.

By the Peace of Paris America had contracted obligations other than those due to her creditors, which the States had ignored. By the fourth article of that agreement they were bound to remove every impediment to the recovery of *bona fide* debts (owed by Americans to British subjects), and some of them had passed laws in flagrant disregard of this obligation.<sup>3</sup> The British Government declined therefore to evacuate posts which they still occupied in American territory when the peace was signed. Jay, the candid Secretary for Foreign Affairs, reported to Washington that the States had violated the treaty. 'Had we observed good faith on our part,' wrote Washington, 'we might have told our tale to the world with a good grace, but complaints ill become those who are found to be the first aggressors.'<sup>4</sup>

Stability of the State Governments threatened by the prevailing anarchy. The foundations of liberty as conceived

Events meantime had been going from bad to worse. 'Enormous opinions which confound liberty with an exemption from legal controul' were abroad in men's minds, producing 'a state of things which alarmed all reflecting men, and demonstrated to many the indispensable necessity of clothing government with powers sufficiently ample for the protection

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. p. 93.

<sup>2</sup> *Ibid.* p. 87.

<sup>3</sup> *Ibid.* p. 99.

<sup>4</sup> *Ibid.* p. 99.

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of the rights of the peaceable and quiet, from the invasions of the licentious and turbulent part of the community.'<sup>1</sup> The authority not merely of Congress but of the States themselves was threatened with dissolution. As Jay wrote to Washington, 'Private rage for property, suppresses public considerations, and personal rather than national interests have become the great objects of attention. Representative bodies will ever be faithful copies of their originals, and generally exhibit a chequered assemblage of virtue and vice, of abilities and weakness. The mass of men are neither wise nor good, and the virtue like the other resources of a country, can only be drawn to a point, by strong circumstances ably managed, or strong governments ably administered.'<sup>2</sup> 'Your sentiments,' replied Washington, 'that our affairs are drawing rapidly to a crisis, accord with my own. What the event will be is also beyond the reach of my foresight. We have errors to correct; we have probably had too good an opinion of human nature in forming our confederation. Experience has taught us, that men will not adopt and carry into execution measures the best calculated for their own good, without the intervention of coercive power. I do not conceive we can exist long as a nation, without lodging somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the state governments extends over the several states. To be fearful of investing Congress, constituted as that body is, with ample authorities, for national purposes, appears to me the very climax of popular absurdity and madness. . . . We must take human nature as we find it: perfection falls not to the share of mortals. Many are of opinion, that Congress have too frequently made use of the

by Jay  
and Wash-  
ington.  
June 27,  
1786.

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. p. 130.

<sup>2</sup> *Ibid.* pp. 109-10.

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suppliant humble tone of requisition, in applications to the states, when they had a right to assert their imperial dignity, and command obedience. Be that as it may, requisitions are a perfect nullity, where thirteen sovereign, independant, disunited states, are in the habit of discussing, and refusing or complying with them at their option. Requisitions are actually little better than a jest, and a by-word throughout the land. If you tell the legislatures they have violated the treaty of peace, and invaded the prerogatives of the confederacy, they will laugh in your face. What then is to be done? Things cannot go on in the same train for ever. It is much to be feared, as you observe, that the better kind of people, being disgusted with these circumstances, will have their minds prepared for any revolution whatever. We are apt to run from one extreme into another. To anticipate and prevent disastrous contingencies would be the part of wisdom and patriotism. What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror! From thinking proceeds speaking, thence to acting is often but a single step. But how irrevocable and tremendous! What a triumph for our enemies, to verify their predictions! What a triumph for the advocates of despotism, to find that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are merely ideal and fallacious! Would to God that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend.'<sup>1</sup>

Washington's  
lesson  
misinter-  
preted by  
Freeman.

The experience of creating a commonwealth from its raw materials had taught Washington the principle of its structure. More thoroughly than some of his modern admirers he had learned how freedom differs

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 110-13.

from anarchy. Exactly a century later, the anniversary of his own birthday was chosen for airing the 'enormous opinion' which Washington was combating in these letters.<sup>1</sup> If Freeman had seen, as his hero had done, society dissolving into its primitive elements, he would scarcely have drifted into talking as though the enforcement of unwilling subjects were the feature which distinguished empires from commonwealths. Eleven turbulent years had taught Washington and his associates that because unwilling subjects are and always will be a fact to be reckoned with, a commonwealth armed with dominion and competent to enforce it is the essential condition of freedom. 'We imagined,' he wrote in August, 'that the mildness of the government and the virtue of the people were so correspondent, that we were not as other nations, requiring brutal force to support the laws. But we find that we are men, actual men, possessing all the turbulent passions belonging to that animal, and that we must have a government proper and adequate for him. Men of reflection and principle are determined to endeavour to establish a government which shall have the power to protect them in their lawful pursuits, and which will be efficient, in cases of internal commotions or foreign invasions. They mean that liberty shall be the basis;—a liberty resulting from the equal and firm administration of the laws.'<sup>2</sup>

1786.

The closing words of this letter are a reference to measures which were now in train for giving effect

<sup>1</sup> See extract from Professor Freeman's address delivered in 1886 on Washington's birthday, printed above, pp. 227-8. 'That this now familiar name of "Empire" expresses a fact, and a mighty fact, none can doubt. The only doubt that can be raised is whether the fact of Empire is a wholesome one. . . . Empire is dominion; it implies subjects; the name may even suggest unwilling subjects.' A study of Washington's papers should have shown Freeman that he could hardly have selected a theme less appropriate to the occasion.

<sup>2</sup> Marshall, *The Life of Washington*, vol. v. p. 134.

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Narrative  
of pro-  
ceedings  
which  
under the  
guidance  
of Wash-  
ington  
and his  
associates  
led to the  
Convention  
of Phil-  
adelphia.

to the principles here set forth. The story has been brilliantly told by Hamilton's latest biographer.

'In the early spring of 1785 a modest but memorable meeting took place at Washington's country seat of Mount Vernon, between representatives from the states of Maryland and Virginia. The occasion was a conference in regard to waterways between the eastern settlements and the western unpeopled land lying in the valley of the Ohio and to the north-west. The greater portion of these vast territories had been ceded to the Federal Government by the various states who claimed them under their charters, or by virtue of a nominal occupation. To the south North Carolina stretched out in a wide strip to the banks of the Mississippi. Her western population, being something more than nominal, had refused to be included in the cession, and after an unsuccessful effort to form themselves into a separate state under the name of Frankland, had been compelled to return to their old allegiance.

'The development of the western country was one of the great dreams of Washington's life. He foresaw the importance of these possessions at a time when few men were willing to give them much thought. They were the fruits of the great policy of the elder Pitt, in which, as a youthful soldier, Washington had borne a distinguished part. What the Treaty of Paris in 1763 had secured to Britain, another Treaty of Paris in 1783 had divided between Britain and the victorious colonists. This rich inheritance it was his fixed determination to weld into the confederacy. By speech and correspondence he had pressed the matter upon his fellow-citizens even before peace had actually been signed; and throughout the whole of the turbulent period which ensued he continued to urge the need for development, and for the firm attachment of this estate to the rest of the Union.



When these means proved inadequate, being a practical man, he founded a joint-stock company to open up communications.

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‘Even the peculiar advantages of this territory appeared to Washington to contain some not inconsiderable dangers. The splendid waterways of the Mississippi and its tributary streams were not an unmixed advantage, seeing that the mouth and the lower reaches were in the hands of Spain, who also extended a shadowy claim to the whole western bank and to the unknown region beyond. The easiest course for the new settlers was to drift their produce down the broad current to New Orleans, and the dread of Washington was lest this tendency might induce “a habit of trade” with a foreign power; an intimacy and a mutual interest which in the end might lead to a detachment from the Union. Consequently, at a time when the chief matter of political anxiety with regard to the western lands was the menace by Spain against the free navigation of the Mississippi, he was more concerned to develop the natural trade routes from east to west by clearing the waterways of the James, the Potomac, and the Ohio, and by the construction of a system of supplementary canals.

‘It was for the adjustment of certain differences, and to procure the co-operation of the two states, whose sympathies had already been enlisted in this enterprise, that the meeting took place at Mount Vernon in March 1785. As the delegates had come together in a business-like and peaceful spirit, other matters of mutual interest were brought tactfully under discussion—the advantages of a uniform currency and system of duties; the need for a general cohesion and mutual support among the confederated states. Under the spell of a great character prejudice was for the moment forgotten, and invitations were

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issued to Pennsylvania and Delaware to join in the discussion. But good feeling expanded even further—once started on the course of reason it was easy to urge it forward—and it was ultimately decided to propose to all the thirteen states that in the autumn of the following year (1786) they should meet at Annapolis to discuss the whole commercial situation.

‘Before this date arrived the paper panacea had been pricked,<sup>1</sup> and Shays’s rebellion was in full blast. In addition, the disputes with Spain about the free navigation of the Mississippi had come to a head. Threats of the confiscation of American ships presuming to enter the lower waters had been followed up by action. The southern states were in a flame of indignation. Their northern neighbours were apathetic. The problems of the Mississippi did not touch their interests at any vital point. On the contrary, they desired nothing so much as a good understanding with Spain, for they had hopes that in this quarter their courtship might not be despised, and that a commercial treaty might at last be signed. All this pother about free navigation for the sake of a few backwoodsmen seemed to them to indicate a lack of the sense of proportion. Jay at the Foreign Office took this view of the matter, and, as a compromise, advised Congress to consent to close the river to free navigation for a period of twenty-five years. The southern states were in no mood for such concessions, and threatened that if Jay’s proposal were accepted they would secede and return to the British allegiance. The New England states, with an equal vivacity, threatened secession unless the recommendation were confirmed. The crisis was averted only by an indefinite postponement; New Jersey, Pennsylvania, and Rhode Island siding with the South.

<sup>1</sup> The reference is to the collapse of the paper currency.

‘The convention of Annapolis, though it met in stirring times, was but a thin congregation. Only five of the states appointed commissioners who attended; four appointed commissioners who did not attend, and the remaining four did not appoint commissioners at all. The last class included Maryland, which had joined in issuing the invitation; but what was more than all the rest, New York was represented by Hamilton, and Hamilton ruled the convention. . . .

‘In the short session at Annapolis it became evident to the delegates, under the searching analysis of Hamilton, that the only remedy for the evils affecting trade must be looked for in broad constitutional changes which their limited commissions gave them no authority to discuss. Under the influence of his vigorous spirit the convention had a remarkable result; for out of its unanimous conclusion that it could do nothing great things came to pass.

‘Hamilton drafted an address which, after much modification, was adopted. . . . The address concluded by recommending that “the states by which they have been respectively delegated would concur themselves, and use their endeavours to procure the concurrence of the other states in the appointment of commissioners to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government *adequate to the exigencies of the Union.*” ’<sup>1</sup>

As indicated in this narrative, an outbreak of anarchy in New England was threatening the existence of the State Governments themselves. Tumultuous meetings were held which denounced the compensation promised to the officers of the army, payment of taxes,

Washington's  
comments  
on the  
suggestion  
that his

<sup>1</sup> Oliver, *The Life of Alexander Hamilton*, pp. 137-42.

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personal  
influence  
should be  
used to  
maintain  
order in New  
England.

and the administration of justice, and called for a depreciated currency as a relief from the pressure of public and private burdens. Colonel Lee wrote to tell Washington that a proposal was on foot that Congress should invite him to visit the disturbed districts, in order that his influence might tranquillize them. 'In one word, my dear general, we are all in dire apprehension that a beginning of anarchy, with all its calamities, is made, and we have no means to stop the dreadful work. Knowing your unbounded influence, and believing that your appearance among the seditious might bring them back to peace and reconciliation, individuals suggest the propriety of an invitation to you from Congress to pay us a visit. This is only a surmise, and I take the liberty to mention it to you, that, should the conjuncture of affairs induce Congress to make this request, you may have some previous time for reflection on it.'<sup>1</sup> Thus had Americans learned to lean upon one man, trusting to his strength to redress the feebleness of their own system. 'The picture which you have exhibited,' replied the general, 'and the accounts which are published of the commotions and temper of numerous bodies in the eastern country, present a state of things equally to be lamented and deprecated. They exhibit a melancholy verification of what our transatlantic foes have predicted; and of another thing, which, perhaps, is still more to be regretted, and is yet more unaccountable, that mankind, when left to themselves, are unfit for their own government. I am mortified, beyond expression, when I view the clouds which have spread over the brightest morn that ever dawned upon any country. In a word, I am lost in amazement, when I behold what intrigue, the interested views of desperate characters, ignorance and jealousy of the minor part, are capable of effecting,

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. p. 137.

as a scourge on the major part of our fellow-citizens of the Union; for it is hardly to be supposed, that the great body of the people, though they will not act, can be so short-sighted, or enveloped in darkness, as not to see rays of a distant sun through all this mist of intoxication and folly.

‘You talk, my good Sir, of employing influence to appease the present tumults in Massachusetts. I know not where that influence is to be found; nor, if attainable, that it would be a proper remedy for these disorders. *Influence is not government.* Let us have a government, by which our lives, liberties, and properties, will be secured, or let us know the worst at once.’<sup>1</sup> These were conditions which even the Government of Massachusetts was now ceasing to realize, for its Treasury was unable to find funds sufficient to keep the State-militia in the field for a week. Money was presently subscribed by Governor Bowdoin and some wealthy Bostonians, enough to equip forces which in the course of the winter crushed the rebellion after several engagements.

In all the States but Rhode Island the politicians were now thoroughly frightened, and agreed to the proposed Convention for revising the whole system of government. In May their delegates assembled at Philadelphia under the presidency of Washington, who had come to represent Virginia. The draft of the Constitution, under which the people of the United States of America have since been governed, was signed in the following September. Its authors advised that Congress should refer it to conventions of delegates in each State specially chosen for the purpose, and should bring the Constitution into force when nine States had accepted it. This was done, and within a year Congress was able to declare that the new Constitution was ratified, and to arrange for

New  
Constitution  
produced  
by the  
Philadelphia  
Convention.  
Its ratifica-  
tion and the  
institution  
of the  
Federal  
Govern-  
ment.

Sept. 17,  
1787.

<sup>1</sup> Marshall, *The Life of Washington*, vol. v. pp. 137-8.

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1789.

The  
Articles  
of Con-  
federation  
contrasted  
with the  
present Con-  
stitution of  
the United  
States.

elections.<sup>1</sup> In the following year Congress was elected, and Washington unanimously chosen as President. On April 30 he took the oath and assumed office in New York.

The principles and methods of the commercial system had first divided the British Commonwealth, and then threatened to reduce the part cut off into a heap of ruins. Its traditions had inspired the Articles of Confederation adopted in 1781, and it was only by discarding them that the Convention of Philadelphia had framed a Constitution under the provisions of which the people of the thirteen colonies achieved the essentials of statehood. A comparison of the two documents will show why the one succeeded where the other failed. The Articles of Confederation had begun by postulating the sovereignty of the several States.<sup>2</sup> Article II. reads as follows: 'Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.' This was a postulate, and it was followed by a tacit assumption, for as Article III. declared, 'The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.' It was here assumed not only that these mutual interests were permanent but also that they would always in future be recognized as such. For in Article XIII., the final and operative clause of the contract, these sovereign States covenanted to endorse

<sup>1</sup> See Note D at end of this chapter, p. 660.

<sup>2</sup> See Note C at end of this chapter, p. 653.

resolutions of Congress passed from time to time in accordance with powers assigned to it, and promised to abide by the Articles of Confederation. 'Every State shall *abide by the determinations of the United States in Congress assembled*, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be *inviolably observed by every State*, and the Union shall be *perpetual*.'<sup>1</sup>

In using the word sovereignty without realizing what was involved in it, the authors of this document had failed to see that this thirteenth Article was in conflict with the second. The essence of sovereignty, whether vested in a monarch or a sovereign assembly, is legal omnipotence. A sovereign is no abstraction, but must always consist of one or more human beings. What reason is to the body, that sovereignty is to the state—the nerve-power created to apprehend the vicissitudes of life, and, in order to guide the body corporate through them, charged with the widest possible authority over all its resources. Sovereignty can recognize no higher authority than itself without destroying its own attributes. As its claim to command the resources of the community is unlimited, so is its judgment unfettered in deciding how far that claim is to be exercised, to what extent the resources of the state are to be evoked, and how they are to be directed. Sovereignty is legal omnipotence vested in certain persons for the time being. But their legal omnipotence is yet limited by the fact that they themselves are creatures of a day. Sooner or later they will pass and be gone, and what they have done the future custodians of legal omnipotence can undo. The one thing which from its nature sovereignty cannot do with effect is to bind itself. The one thing which sovereigns cannot do, despite

Inherent conflict in the Articles of Confederation due to a failure to grasp the nature of sovereignty and its consequences.

<sup>1</sup> See p. 659.

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their legal omnipotence, is legally to bind their successors. Hence the inherent infirmity of treaties and of all political structures raised on the foundation of compact. The men who sat in the assemblies of 1781 failed to see that if the pledge they were giving in Article XIII. was valid at all it must deprive their successors of freedom to be guided by their own judgment when selecting, in the light of future and unforeseeable events, the course to be followed in the interests of their State. Such a pledge, if really operative, was fatal to the sovereignty postulated in Article II. The legislatures of 1781 were, in fact, presuming to decree by their votes that their successors should cast their votes, not in accordance with the interests of their several States as seen by those successors, but in accordance with those interests as seen once for all by the authors of the contract in 1781. As events proved, their successors refused to be so bound, and consequently the States failed to '*abide by the determinations of the United States in Congress assembled.*' The Articles for the Confederation were not '*inviolably observed by every State,*' with the result that in a few years a union which purported to '*be perpetual*' seemed 'ready to fall upon the heads of those who had made it and to crush them beneath its ruins.'<sup>1</sup>

The truth,  
that a  
state can-  
not consist  
of states  
but only  
of men,  
appre-  
hended by  
Hamilton.

'It has not a little contributed,' wrote Hamilton, 'to the infirmities of the existing federal system, that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers, and has, in some instances, given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a State, it has been contended that the same authority might

<sup>1</sup> Hamilton, *The Federalist*, No. XV. p. 91.



repeal the law by which it was ratified. However gross a heresy it may be to maintain that a *party* to a *compact* has a right to revoke that *compact*, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.’<sup>1</sup> Hamilton was here feeling his way to the truth. The stability of a union is determined far less by the exact method of its ratification than its authors are apt to suppose. Popular assent, however, was important as a practical recognition of the basic principle, which Hamilton demonstrated, that a state cannot be made of states but only of citizens.

The Confederation of 1781 was, in fact, the kind of attempt to square political circles which men always make when they are ignoring the inexorable conditions of freedom and scheming to evade them. The structure it set up was a sham state, the counterpart of those so-called empires which led to the destruction of Greece and distracted the people of Germany for a thousand years. Its legally minded authors had failed to realize that compacts are only irrevocable in so far as they are subject to one sovereignty capable of enforcing them. It is that immutable quality in a state, that essential permanence distinguishing it not in degree, but in kind, from all other types of association, which enables it to secure that men shall keep their promises, or, in other words to turn compacts into contracts. The state cannot derive from compacts the immutable

Why a state cannot be founded on compact, but only upon the individual dedication of citizens.

<sup>1</sup> Hamilton, *The Federalist*, p. 135.

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quality which it gives to contracts. In human affairs the only enduring bond is one by which men are united in all respects by an unlimited devotion, severally yielded to a single state. It is only by virtue of the fact that men are so bound to the state in all things that they can bind each other by contract in some things. The state itself cannot cohere unless it contains a sufficient number of members so deeply actuated by a sense of duty to their fellow-citizens, present and future, as to be ready to sacrifice everything to maintain the common authority. This imposing structure was tottering because its foundations were laid in the quicksands of compact, and had not been carried right down to the bedrock of individual dedication.

How the foregoing principles were embodied in the present Constitution of the United States.

It was this principle which inspired the Constitution under which the people of the United States of America at length realized the conditions of a commonwealth. The language in which it opens is not that of contract but of dedication. 'WE, THE PEOPLE of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.' The same principle was observed in the method chosen for the enactment of the Constitution, for the Convention resolved: 'That it should be submitted to a convention of delegates, chosen in each State by the people thereof . . . for their assent and ratification.' It was the electorates of these thirteen States and not their executives or legislatures who created a national Government in 1788, and transferred to it from their own State Governments such powers as it would require to fulfil the national tasks assigned to it, the power 'to

provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions,' 'To declare war,' 'to raise and support armies,' 'to provide and maintain a navy,' and 'to levy and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States.'

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Whenever the way to freedom runs up-hill men have often tried some by-path across lower ground, only to lose themselves in thickets and swamps. It was thus with the Ionians when they failed in the Synod of Delos to realize a genuine system of representation. When inviting his people to send representatives to meet him, Edward I. had marked the true path by warning them that their delegates 'are to have full and sufficient power for themselves and for the community . . . there and then, for doing what shall be ordained . . . so that the aforesaid business shall not remain unfinished in any way for defect of this power.'<sup>1</sup> Herein was the inexorable condition of representative government, a law ordained by necessity and merely enunciated by Edward I. His now famous writ reads like the direction on an ancient signpost obscured by the lapse of centuries, but at last uncovered by the industry of modern research. In framing the Articles of Confederation the Americans had missed it and had wandered down the easier road. Happily for them, however, they had listened in time to the warnings of Washington and the Federalists, and in accepting the Constitution of Philadelphia had resumed the steeper and less obvious path up which Edward I. had led their ancestors five hundred years before.

Principle of representation as enunciated by Edward I. ignored in the Articles of Confederation, but recognized in the Constitution of 1788.

In framing that Constitution, however, they themselves were pointing the way to a higher freedom, to a

<sup>1</sup> See above, pp. 100-101.

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How the fathers of the American Constitution themselves opened the way to a further extension of the principle of the commonwealth.

The possible size of a commonwealth no longer limited by the physical difficulty of collecting in one assembly representatives from every part of it.

Inexorable limits to the capacity of one Parliament for transacting business.

wider application of the principle of the commonwealth. That system of government first began in Greece when neighbours who gathered in one market-place had learned how to focus their experience into laws, and to endure any sacrifice needed to make them prevail. To these founders of freedom it seemed inconceivable that a commonwealth could ever include citizens more than could be collected in one place and join in one discussion.<sup>1</sup> That prediction was falsified when the English device of representation had made it possible for much wider communities united by a sense of race to focus their experience into laws. There were limits to the area which could be governed by an assembly of representatives gathered at one point; but those limits were not, as Burke believed, permanently fixed by the obstacle of mere space. Problems of distance required for their solution improvements rather in the sphere of mechanics than of politics, and to-day it would be easier for representatives from both sides of the Atlantic to meet than it was for representatives from the opposite extremities of England in the days of Edward I. Under modern conditions of travel there would be no insuperable difficulty in collecting an assembly from the furthest limits of the globe, and the time will arrive when the difficulty will have ceased to exist.

The time, however, will never arrive when one assembly could attempt to enact all the legislation required from day to day by the various sections of the human race, for the collective capacity of one legislature for transacting business is a factor which mechanical inventions can do little to increase. The work its members can get through is not so much limited by the time they must take in travelling to a common centre, as by the time at their disposal when they are convened. With a jurisdiction no larger

<sup>1</sup> See above, pp. 25-6.

than England, Parliament in the Middle Ages had been obliged to pass laws applicable only to the peculiar conditions of particular localities, and the growing complexity of civilization has further increased the need for differential legislation. The legislative wants of a community like Athens, smaller in population and scarcely larger in area than some modern municipalities, could all be satisfied by uniform legislation. But as soon as the device of representation had rendered possible the existence of commonwealths on a national scale this ceased to be so. If commonwealths larger and more populous than England were to be realized, no single Parliament could hope to grapple with the business of suiting the laws in detail to the needs of various localities.

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Need of  
local  
legislation  
in any  
common-  
wealth  
larger than  
Athens.

English society, however, with its power of adapting itself to new conditions had prepared the way for a solution of this problem. This, as shown in previous chapters,<sup>1</sup> explains why the English plantations had struck their roots so much more deeply, and grown so much more freely than those of Spain or France. The English colonists had been left to work out for themselves a framework of society suited to the novel conditions of soil and climate in which they found themselves. American conditions differed from those of Europe, and English colonists were permitted to adapt their organization to the difference. But the various parts of North America differed from each other as much as or more so than the various parts of Europe. No society established on a perfectly uniform pattern could possibly have suited a country which included climates and soils more different than those which are to be found between Finland and Sicily. It would have been a fatal mistake, therefore, if, the first colony having been established with a representative assembly of its own in Virginia, every later settlement

How the  
English  
system of  
coloniza-  
tion had  
permitted  
the free  
develop-  
ment of  
local  
legis-  
latures.

<sup>1</sup> See above, pp. 212-18, 304-5.

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from New England to Georgia had been called on to send representatives to that one central assembly. Even if such an assembly could have been gathered, it could never have found time to work out the multitude of local enactments which were required to suit the conditions of its highly various constituents. As it was each settlement was happily allowed to develop an assembly of its own, through which the local experience could be collected and embodied in statutes suited to the local conditions.

Central government in a great commonwealth rendered possible only by the development of local authorities.

As these communities grew their respective inhabitants came into touch with each other, and began to develop relations of a wider kind which there was no authority in America competent to control. The true conditions of liberty could not be realized until the American people had acquired for themselves an organ through which they could control these wider relations. Such an organ was effectively created by the Constitution of 1788. But if its authors had tried to impose on that central organ the whole of the business at present transacted by the States, they would have robbed the Commonwealth of its present power of adapting its law to local conditions. The burden, moreover, placed on the central organ would have been so heavy as to impair its utility for national purposes. Not many years would have passed before the same kind of creeping paralysis, which is gradually enervating the Imperial Parliament of the British Commonwealth, would have overtaken it. The avoidance of this error explains why the American Commonwealth has been able to extend without either splitting into pieces or losing its efficiency. When its Constitution was framed the thirteen original States contained some 3,500,000 inhabitants of all races. To-day it includes some forty-eight States with an aggregate population of more than 100,000,000 souls. Exponents of mere

centralization are for ever harping on the vices of the State legislatures as though they were bodies not bad by comparison, but like Sodom and Gomorrah bad in themselves and past cure. In any state the local organs, when dissected and viewed apart, nearly always suffer by comparison with the organs of the central government. What these critics forget, however, is that in a great commonwealth it is the presence of these local organs which alone renders possible the existence of the central government. If the State Governments were abolished as things too rotten to reform, the government of all America through the central organ at Washington would be wholly impossible. The stomach, liver, and bowels, as the anatomists know, are sadly defective organs ; but without them the development of life would never have passed the stage of the jelly-fish.

The cause of liberty does not, indeed, depend upon the development of central governments, nor yet upon the development of local authorities. In the last analysis it must always depend upon the due development of both. A glance at the conditions of America as they now are will best illustrate this truth. Let it be supposed for a moment that the United States were divided into forty-eight sovereign communities, with no common organ through which the general affairs of America might be rendered amenable to the control of the people at large, such conditions would mean that the people of North America would be as much exposed to the interference and domination of foreign powers as were the people of Germany, so long as they remained divided into a multitude of separate states. But they would also be at the mercy of vast commercial corporations, which, even as things are, the powers of the Federal Government are scarcely sufficient to control. The subdivision of the American Commonwealth into forty-eight sovereign

This truth  
illustrated  
by the  
conditions  
of the  
United  
States.

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states would in fact mean the subjection of the people at large to a subtle and intangible network of tyranny.

Let it now be supposed, on the other hand, that the whole of these local legislatures were abolished and that their powers were transferred to the central government at Washington. It will be obvious that in agriculture, education, and a large number of matters, it would be mischievous in the extreme if uniform laws were applied to districts so different as those of Maine, California, Dakota, and Florida. In theory, of course, a central legislature might, as in England, pass local laws applicable to local conditions, but in practice it will readily be seen that no such legislature would have the time to digest the necessary measures unless it broke itself up into a large number of committees. But if this expedient were adopted, the members of these local committees would be so busily employed that they would have no time in which to attend to the general concerns of the Commonwealth as a whole. Congress, in a word, would be unable to digest the reports of its own multitudinous committees, and the same would be true of the central Executive. The business would have to be divided amongst so many officers of ministerial rank that the Executive as a whole would lose control of its component parts. In order to correlate their work the President would need more than a Napoleon's capacity for transacting business.

The principle of distributing functions between central and local governments, embodied in the

Herein lies the importance of the work accomplished by the Philadelphia Convention of 1787. In the writs with which Edward I. had summoned the Model Parliament he had stereotyped the principle of representation. In like manner the Philadelphia Convention in establishing the American Commonwealth had stereotyped the principle of confining



the central government of the Commonwealth to the management of such affairs as were common to the people as a whole and which experience had shown could not be controlled by the co-operation of separate States. It had carefully preserved the executive and legislative machinery of the States, and had assigned to them all the business, which from the nature of the case they could transact. In a large state the difficulty will always be for the central government to find time and strength for the transaction of the general affairs. It was so in the Roman Empire; but in commonwealths the difficulty is far greater than in autocracies. Indeed, it may be said that the principle of the commonwealth depends for its future growth upon the success or failure of statesmen in devising means for relieving the central government of any business that can possibly be transferred to local authorities.

Thus were provided in the Constitution the two conditions essential to the existence of a great commonwealth, a central government with powers adequate for the general interests, and local governments with authority adequate for local interests. This was much, but it was more that the Constitution went on to provide that, as the Commonwealth grew, the operation of the central and local authorities should both be extended automatically and so far as possible side by side. The United States was to emit colonies as England had done,<sup>1</sup> but only as the germs of local authorities subject to the authority of the parent Commonwealth. Most of the revolted States had filed claims to the unoccupied territories of the West. Congress, more successful in this than in other directions, had persuaded them to assign these claims to itself, and while the Convention was sitting at Philadelphia provided for their future

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American Constitution as important to the extension of liberty as the institution of representative government.

Provision in the Constitution for the automatic incorporation of colonies in the Commonwealth.

<sup>1</sup> See Map (b) on Plate X. at the end of this volume.

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Jan. 13,  
1787.

government in an ordinance only less important than the Federal Constitution itself. In effect, the familiar methods of British colonial administration were applied to the West. To begin with, territories were to be administered, as in a Crown colony, by officials nominated by the central Government. As the population increased a governor was to be appointed by Congress and a representative legislature for the colony called into existence. Conditions were then defined under which they were eventually to be admitted as partner States in the Confederation. The Convention of Philadelphia took note of these proceedings, and in the Constitution they were drafting secured to the Federal Government the authority necessary for administering these territories, for controlling the development of their organization and for their eventual admission as States on an equal footing with the rest.<sup>1</sup> The details had still to be worked out in years to come by Congress in accordance with the powers secured to it by the Constitution; but the net result has been that settlers in an American colony, when acquiring the full privileges of responsible self-government, assumed at the same time the fullest responsibilities of the Commonwealth as a whole. In achieving Statehood they also acquired full representation in the Federal Government and assumed the full responsibility for all burdens. An effective provision was thus made from the outset to correct the fissiparous tendencies of a commonwealth. British statesmen had failed to devise any system whereby colonists could continue to discharge the full duties of citizenship in respect of the general Commonwealth. They had failed to realize that, unless such a system was devised, these colonies must of necessity develop, as in Greece, into separate commonwealths and split off. Massachusetts

<sup>1</sup> See Note D at end of this chapter, Article IV. sect. 3, p. 668.

had claimed this position from the outset.<sup>1</sup> The authors of the Constitution now saw to it that no American colonist should ever be entitled to make that claim. From first to last he was to remain a citizen of the United States, and it was merely a matter of time till the inhabitants of a colony should be initiated to the widest responsibilities of the Commonwealth. The process was defined and made automatic, and a repetition of the process by which the thirteen colonies had been separated from the parent Commonwealth was successfully forestalled. That separation was in harmony with the principles of colonization as understood by the Greeks, and was applauded by Freeman as such. In his enthusiasm for it, however, he omitted to note that a further application of the Greek principle to America was expressly barred by the authors of its Constitution.<sup>2</sup>

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Experience had taught these legislators that there were certain interests common to the people of the United States. These they scheduled, and from the materials of the existing Congress they remodelled a genuine central authority with general powers adequate to the administration of these specified interests. Most other functions of government were assumed to be local functions, and these were assigned to genuine local authorities remodelled from the materials of the existing States. Certain other powers, such as passing a Bill of Attainder or an *Ex post facto* Law, were assigned neither to the central nor to the local authorities.<sup>3</sup> Such a law as that recently passed by the South African Union legalizing the deportation of nine labour leaders could

Federalism consists not in 'a division of sovereignty between central and local authorities,' but in the vesting of sovereignty in a dormant legislature.

<sup>1</sup> See above, pp. 205, 320.

<sup>2</sup> For the passage to which reference is made see extract printed on pp. 228-9, from Freeman's address delivered on the anniversary of Washington's birthday.

<sup>3</sup> See Note D at end of this chapter, Article I. sects. 9 and 10, pp. 664-5, and the first fifteen Amendments, pp. 672-6.

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have been passed in America neither by any of the State legislatures nor yet by Congress. One all-important power was given neither to the central nor local authorities—the supreme power of altering the distribution of functions assigned in the Constitution to each, or of assigning to one or other of them the functions denied in the Constitution to either. Nevertheless, the distribution of functions has from time to time been legally altered. It was only the other day that Congress for the first time received the power of levying an Income Tax. It follows, therefore, that the Constitution must somewhere contain a legislature to the authority of which Congress and the State Governments are both subordinated, and a glance at Article V. will show where it is. ‘The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.’

Here in fact is a latent legislature, which, like all legislatures, is endowed with a certain procedure. A very cumbersome procedure was devised in this case in order that the sovereign legislature might not lightly be moved to redistribute the powers of government, and, when moved, might proceed only with the

greatest deliberation. Yet it is capable of being moved and might even be used to modify its own procedure and render an amendment of the Constitution more easy. 'One may say,' says Dicey, 'with sufficient accuracy for our present purpose, that the legal sovereignty of the United States resides in the States' governments as forming one aggregate body represented by three-fourths of the several States at any time belonging to the Union.'<sup>1</sup> The American Constitution does not purport to partition sovereignty but only the powers of government, the term correctly used in the opening words of Article I. The partition of such powers between central and local authorities was no new departure, for some such partition is necessary to all states with territories larger than those of Athens.<sup>2</sup> The real innovation in political structure was the placing of the central authority on the same footing as the local authorities, that is to say, in subordination to a legislature only to be called into action for the purpose of altering the distribution of powers.

This, so far as its internal provisions are concerned, was the distinguishing feature of the Constitution of 1788. But of even greater significance for the future of freedom was the manner in which this instrument had been framed. In breaking off from the British Commonwealth, the Americans had retained the principles which had inspired its vitality. But they had also retained the tendencies inherent in free communities to pervert those principles to their own undoing. The commonwealth is a society based on the moral relations of men to each other, and upon its extension depends the extension of liberty. No serious political thinker will question that a higher liberty was achieved by the Union of the States than

The Constitution of 1788, in providing against the fissiparous tendencies of the Commonwealth, succeeded where British statesmanship has so far failed.

<sup>1</sup> Dicey, *The Law of the Constitution*, pp. 144-5.

<sup>2</sup> On this subject see Seeley, *Introduction to Political Science*, p. 93.

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if the hundreds of millions destined to inhabit those territories had been allowed to divide themselves into forty-eight republics. The fissiparous tendency which had severed the colonies from Britain had been threatening to sever them from each other. The Constitution of 1788 not only united them in one Commonwealth, but was so designed as to render it capable of further expansion. Within certain limits it could grow without falling to pieces. The statesmen of the younger Commonwealth had thus succeeded where those of the older had failed, and still continue to fail.

The  
attitude  
of British  
statesmen  
towards  
this  
recurrent  
problem  
typified  
in Burke.

For the purpose of this inquiry, therefore, it is of crucial importance to compare their methods and modes of thought. Nowhere is the British attitude towards this problem better exemplified than in the speech which Burke delivered in the House of Commons just four weeks before the final resort to arms at the battle of Lexington. With unanswerable force Burke urged that the Welsh could never have been incorporated in the Commonwealth unless they had been admitted to representation in Parliament;<sup>1</sup> but just when his argument seemed to commit him to some proposal for the representation of the American colonists he broke off with the remark that a great flood stopped him in his course. Nature herself was opposed to such remedies. 'I cannot,' he cried, 'remove the eternal barriers of the creation. The thing, in that mode, I do not know to be possible. As I meddle with no theory, I do not absolutely assert the impracticability of such a representation. But I do not see my way to it; and those who have been more confident have not been more successful. However, the arm of publick benevolence is not shortened; and there are often several means to the same end. . . If we cannot give

<sup>1</sup> Burke, *Works*, vol. iii. pp. 86-90.

the principal, let us find a substitute. But how? Where? What substitute? Fortunately I am not obliged for the ways and means of this substitute to tax my own unproductive invention. I am not even obliged to go to the rich treasury of the fertile framers of imaginary commonwealths; not to the Republick of Plato, not to the Utopia of More; not to the Oceana of Harrington.<sup>1</sup> Neither Burke nor his hearers had had time to forget the ridicule he had poured on the proposal to open Parliament to the colonists six years before.<sup>2</sup> Could Burke have probed his own motives to the bottom, might he not have found that the flood which stayed him was not the Atlantic but his own eloquence? His own conservatism, rather than Nature, was forcing him to evade the conclusions of the argument which he himself had chosen to use. Compelled, however, to suggest some positive measure, this exponent of practical politics took refuge in the proposals advanced by the colonists themselves,<sup>3</sup> and urged that the Imperial Government should depend upon the gratuitous bounty of the colonial assemblies. To establish his case he was forced to assume that the Imperial Government was justified in depending on their bounty, and moved the House to declare that 'the cheerfulness and sufficiency (of the colonial assemblies) in the said grants, have been at sundry times acknowledged by parliament.'<sup>4</sup>

The cases to which Burke referred have already been mentioned in the course of the present inquiry. In 1745 Louisbourg had been captured by the New Englanders, though, when it was surrendered at the end of the war, the Imperial Government had refunded

Facts distorted by Burke in order to avoid the application of his own principles.

<sup>1</sup> Burke, *Works*, vol. iii. p. 91.

<sup>2</sup> See passage from his *Observations on a late publication intituled "The Present State of the Nation"* quoted above, pp. 351-56.

<sup>3</sup> See above, p. 346.

<sup>4</sup> Burke, *Works*, vol. iii. p. 98.

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the cost of the expedition.<sup>1</sup> Pitt, moreover, by the unique ascendancy which he had acquired over the colonists, had succeeded in persuading them to contribute three-fifths of the cost of defending their own territories with their own militia against the French.<sup>2</sup> The governor of Massachusetts, when asked by Amherst to make a requisition on his assembly, had warned the Commander-in-Chief that he 'must have a letter from Mr. Pitt' before they would listen to him.<sup>3</sup> Pitt had of course seen to it that Parliament should acknowledge in cordial terms such grants as were made. As afterwards, in the War of Independence, the 'influence' of a great man availed at a crisis to wring some spasmodic results from machinery that in normal times and in the hands of ordinary men was bound to break down. But neither of the greatest leaders whom the Anglo-Saxon race has ever produced could make the system work the moment that actual hostilities had ceased. In referring to these grants, Burke omitted to notice that they had been made at a moment of imminent peril in response to personal appeals by a statesman of supreme authority. Nor did he pause to inquire whether the cost of defence had been apportioned between one colony and another, or between British and American taxpayers, upon any just and reasonable basis. In the light of the facts set forth in Chapter VI.<sup>4</sup> the essential untruth of the proposition to which he was seeking to commit Parliament will be apparent. There was in reality no ground for supposing that the assemblies would supply the funds necessary to meet the charges for American administration either with cheerfulness or with

<sup>1</sup> See above, pp. 185-6.

<sup>2</sup> See above, pp. 335-6.

<sup>3</sup> Williams, *The Life of William Pitt*, vol. ii. p. 312.

<sup>4</sup> See in particular the carefully summarized conclusions of Beer, quoted on pp. 336-7, and on pp. 338-40.



sufficiency. Those charges were in fact being met by the British taxpayer. More clearly than most of his contemporaries Burke could grasp principles; but his inveterate conservatism shrank from the conclusions to which they led him, and took refuge in distorting the facts which pointed inexorably to the need of some positive act of construction.

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When, twelve years later, Washington and his friends gathered in Philadelphia they had known what it was to stand in the shoes of the Imperial Government. The struggle upon which they had entered to vindicate the principle of co-operation had in fact proved to them its absolute futility as a basis of political union. They themselves had helped to establish a kind of Parliament in which the people at large were unrepresented in the true meaning of the word. By bitter experience they had learned that it was not in the nature of things that such a body should be able to evoke the patriotism or command the loyalty of a free people. They had found that in actual practice the States would not respond to the requisitions of Congress either with cheerfulness or sufficiency. Instead of closing their eyes to these facts, or covering their retreat from them in a cloud of words, they had at length accomplished the very thing which Burke had taken credit for never attempting. In council together they had deliberately framed a scheme of government by the adoption of which the people of America might achieve the mastery of their own future and fate. For men whose hard-earned experience had taught them that there are in politics some principles as inexorable as those of nature it was not necessary 'to go to the rich treasury of fertile framers of imaginary commonwealths.' Having grasped the conditions which must be satisfied before a commonwealth can be realized, they took the structure of

Creation  
of the  
American  
Common-  
wealth  
made  
possible  
only by  
adoption  
of the  
methods  
specifically  
denounced  
by Burke.

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Example  
of the  
Anglo-  
Scottish  
Union  
ignored in  
Burke's  
argument.

American society as they found it and readjusted it, but no further than was necessary for the growth of freedom in America. And thus they laid the foundations of a commonwealth greater than the world had yet seen by the method specifically condemned by Burke, regardless of difficulties which lips less eloquent than his could easily have proved insuperable. In no other way could their task have been done, nor have similar tasks been done before or since. Nor otherwise, it is safe to say, will similar tasks be accomplished hereafter.

It is characteristic of Burke's conservatism that he should have based his argument on Ireland, Wales, Chester, and Durham while omitting all reference to the much more pertinent example of the Anglo-Scottish Union. In Ireland the same problem was still awaiting its solution. In Wales, Chester, and Durham there had been no separate assemblies. They were within the unquestioned jurisdiction of Parliament and could be dealt with on lines familiar to Burke. Scotland was the one part of the Commonwealth which before its final incorporation had lain outside that jurisdiction. The Parliament of England had known that it was not of itself competent to settle the mutual relations of the two peoples. Yet a settlement had been effected and by the very methods which Burke had chosen as an object of ridicule. Representatives of both commonwealths had met and had, in fact, framed a new instrument of government under which the two peoples had become one. 'Though the fact is often overlooked,' says Dicey, 'the Parliaments both of England and Scotland, did, at the time of the Union, each transfer sovereign power to a new sovereign body, namely the Parliament of Great Britain.'<sup>1</sup> The English and Scottish commissioners had not, like Fletcher of

<sup>1</sup> Dicey, *The Law of the Constitution*, pp. 66-7.

Saltoun,<sup>1</sup> sought to devise some arrangement purporting to be applicable to all societies at all times, but went for their material to the constitutions of England and Scotland, and constructed therefrom a new constitution for Great Britain. By incorporating both nations in one state, they saved them from a fratricidal war without in the least impairing the national character of either. But Burke instinctively ignored a departure from the constitutional methods which he had come to reverence as though they were part of the eternal order of the universe. 'In spite of the noble sympathy it displayed with the colonies this speech illustrates Burke's essential weakness—an inability to rise beyond an established order of things or to see that a revolution such as had occurred in America required something more drastic than a mere return to the old order.'<sup>2</sup>

In the older Commonwealth the problem still awaits its solution, but public men continue to approach it in the spirit of Burke, and to disparage the methods whereby Washington and his supporters actually solved it for America. No speech nor treatise on the Imperial problem is felt to be complete without some warning against the folly and danger of framing or discussing definite plans. The student has only to turn to the concluding pages of a recent work on the subject to find an example.<sup>3</sup> 'British history tells us that whatever has been permanent in the work of the English has been the result of evolution from the past, not of breaking with the past, and that the English have built well because the builders have accommodated themselves to the times and the places and have not been hampered by elaborate plans, designs, and surveys

Burke's  
counsels  
adopted  
as the  
orthodoxy  
of British  
Imperial-  
ism.

<sup>1</sup> See above, pp. 290-91.

<sup>2</sup> Williams, *Life of William Pitt*, vol. ii. p. 307.

<sup>3</sup> Lucas, *Greater Rome and Greater Britain*.

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drawn out beforehand by the Government. In considering the future of the Empire it appears feeble and inconclusive not to sketch out a definite programme and to prescribe new machinery. Consequently we have a plethora of plans and schemes. But it is in the very attractiveness of schemes and programmes that the danger for the future consists. The British present has grown up on no definite plan. So far from being logical, it is a unity of contradictions, absolutely impossible on paper, but working very comfortably in fact. To anything like an orderly ground-plan of the future, British instinct, which constitutes British genius, is opposed. It is equally opposed to the all or none element, the absence of compromise which all schemes and plans usually imply. Clear and practical views are constantly obscured by the wholesale character with which both the supporters and the opponents of schemes invest them. There is only one sure guide to the future, and that is the race instinct which represents day to day opportunism.<sup>1</sup>

The true  
and false  
analogies  
disting-  
uished.

Cautionary paragraphs like these have now become so much of a convention that their authors seldom refer to instances in which schemes thought out and prepared in advance have obscured clear and practical views, complicated a problem, or clogged its solution. Here, however, as a reference to the context will show, the author is thinking of the repeated failure of French constitutions. It is true that many constitutions were adopted by the French since the first abolition of the Monarchy in the Revolution of 1789. But what other alternative to despotism had they? Before they could learn to practise freedom they had to frame constitutions for the same reason that men must build aeroplanes before they can learn to fly. Aviators would scarcely

<sup>1</sup> Lucas, *Greater Rome and Greater Britain*, pp. 171-2.

thank critics for exhorting them to consider the birds and not to risk their necks by launching into the air until they had grown wings. But in any case the example of France is irrelevant, for she has never been called upon to unite with another republic. The Cantons of Switzerland, the German States, the Canadian Provinces, and the Colonies of Australia and South Africa are the real cases in point. In each and all of them the relations of separate communities have been settled once for all by plans deliberately framed and consciously adopted, and no one has ever attempted to show how the same result could have been reached if statesmen in those countries had obeyed the maxims of Burke. They are, in fact, no truer than maxims of the copy-book, which teach that pounds can always be saved merely by taking care of the pence. No industry in detail will in the long run relieve statesmen from the duty of grasping principles, or save them from the necessity of applying them. Principles are the rock upon which men may stand, even though they first fall upon them and are broken. But those upon whom they fall they crush to powder.

The prevalence of these maxims is largely due to the circumstance that writers of constitutional history have lavished their attention on one aspect of their subject while almost neglecting another equally important. Their eyes have been fixed upon the slow and at times insensible growth of the English Constitution. They have expatiated on the fact that at certain periods the legislative and executive powers of government passed from the Crown to Parliament so gradually that contemporaries did not realize that they were passing. Constitutional history has been written almost as though it were exclusively concerned with this internal and evolutionary process. To-day England contains a popula-

Historians have been interested rather by the internal development of the English Constitution than by manner in which fresh communities have been brought within its scope.

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tion of 34,000,000, but it is an indisputable fact that upwards of 433,000,000 souls, drawn from all races and civilizations and scattered through every continent of the world, have been brought within the range of its constitution. The manner, however, in which they have been so brought has largely failed to interest the writers of constitutional history. In one of the most recent and authoritative works on English history, in seven volumes, containing in all some 4000 pages, no more than one-third of one page is devoted to explaining how England and Scotland were brought under the same constitution. Unquestionably it is a sign of health in states that their internal structures should grow like those of organisms. It is a certain sign of past neglect and usually an augury of further disorders when statesmen have to revise the whole framework of national government, as Parliament did when it framed the Instrument of Government in 1653, or as the French have done again and again in the century which followed the Revolution. But whenever one commonwealth has to be fashioned from two or more states the case is radically different. Such operations have invariably required a project of political construction consciously devised, and must, from the nature of the case, always do so.

The two conditions of an effective union :  
—1. The necessity of union must be learned. It can only be learned by the slow and gradual process of experience.

The truth is, that Burke and his disciples have always confounded two wholly different conditions which must both be satisfied before commonwealths can be united otherwise than by force. To begin with, the governing class, or in plain words, the voters, in each community must first be convinced that the realization of a greater commonwealth is the only road to a higher freedom. At first it always seems a path too difficult to climb, and they try others which seem to lead to the same end over easier ground, only to find themselves involved in

quagmires. This, indeed, is in accordance with the nature of commonwealths, for the principle which inspires them is that government should be based on the experience, not indeed of the governed, but of those amongst them who are able enough to read its lessons and unselfish enough to apply them. The time comes when the citizens of one commonwealth realize that they have developed interests which can only be controlled in concert with others; yet till they can control them they must remain the slaves of circumstance, and a further step towards freedom is barred. At first it seems easier to settle these common interests (which for the governing class means to discharge their common duties) by leagues and treaties. Nearly always they are studious to avoid the creation of common organs. Leagues and treaties are, however, from their nature unstable, but this must be learnt from experience and not by any abstract train of reasoning. Still jealous to maintain their several sovereignties, they go on to devise joint organs like the Congress of 1775, in the belief that through such organs separate states can enforce compacts upon each other. And again experience must teach them that so long as these organs rest like treaties merely on the basis of compact they are subject in practice to all the infirmities inherent in compacts. Men learn by trial that, so long as the separate sovereignties are maintained, it is they and not the joint organ which command the obedience of individual men; and in the end government depends upon the obedience not of communities but of individuals. Then at last they begin to realize that all further advances towards freedom are closed until they are prepared to merge their several sovereignties into one.

When this stage is reached the first condition of a union is realized.

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2. But when the necessity of union is recognized the union cannot be realized until a constitution has been projected.

It needs no argument to show, however, that two or more organized states cannot merge themselves into one organic whole without publicly declaring their intention to do so in some common form of declaration. But a mere declaration will not suffice. The process involves the dissolution of existing states in order that one new state may be constructed from their materials, and it is essential therefore that every one concerned should know from the outset what is the new government they are to obey, and in what manner its commands will be formulated and expressed. But this can neither be settled nor declared until it is written down and published in some document accessible to all. How can such a document be prepared by methods other than those exemplified in the Convention of Philadelphia? When once the tedious road of experience has been trodden and its lesson learnt and recognized, no further advance can be made unless or until the leaders of those states sit down together, frame a plan, put it in writing, and draft it into the form of a law. If the sovereignties are really separate this last stage cannot be passed by any process which is slow, creeping, gradual, or unconscious.

The deliberate framing of some plan of government in writing is the second essential condition of union between two or more commonwealths.

Reasons why, for the purpose of settling their relations, the self-governing Dominions must be treated as sovereign states.

In comparing the British and American situations there are certain important distinctions upon which it will be necessary to touch at a later stage of the inquiry; but the purely legal sovereignty of Parliament in the British Commonwealth is not one of them. No Parliament continues to enjoy real sovereignty when it has ceased in fact to enjoy the power of taxation. So far as any question of union is concerned the Dominions and the United Kingdom must be treated as sovereignties



no less separate than the thirteen States. 'Power without revenue,' as Hamilton said, 'in political society is a name.' No authority which has not in fact as well as in name the power to exact revenue is sovereign in fact. Every community whose representatives have once been allowed to exercise a sole and exclusive power of taxation over its citizens has acquired the substance of sovereignty, even though it may not as yet have felt itself called upon to exercise all the powers that sovereignty implies. In theory the British Parliament is sovereign over the whole Empire, but in theory only. In practice it is admitted that the Parliaments of the several Dominions have acquired an exclusive power of taxation over their constituents. Nor is it, as usually supposed, a practice which rests on custom only. 'From and after the passing of this Act,' so run the words of the statute passed in 1778, 'the King and Parliament of Great Britain will not impose any Duty, Tax or Assessment whatever, payable in any of His Majesty's Colonies, Provinces or Plantations in N. America or the West Indies; except only such duties as it may be expedient to impose for the Regulation of Commerce: the net produce of such duties to be always paid and applied to and for the use of the Colony, Province or Plantation in which the same shall be respectively levied in such manner as other duties collected by the authority of the Respective General Courts or General Assemblies of such Colonies etc. are ordinarily paid and applied.'<sup>1</sup> This, like all other Acts, is in theory revocable by the sovereign authority of the Parliament by which it was passed. In practice it is no more revocable than the Acts by which, five years later, the British Government acknowledged the independence of the United States; for like that acknowledgment it could never be revoked except by force of arms

<sup>1</sup> For the text of this momentous measure see above, p. 418.

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Reluctance  
to contem-  
plate the  
union of  
the British  
Common-  
wealth  
except  
by a  
process of  
evolution  
a cause  
of mistrust  
and a bar  
to the  
creation  
of con-  
sultative  
organs.

or at the specific request of the colonial assemblies themselves.

Congress, even in its first informal stage, was invaluable as a continuous post of observation whence some representatives from each State might view the interests of America as a whole, and grasp their importance. As regularized by the Articles of Confederation in 1781 it helped Americans to realize the incurable weakness of any such body, so long as the States insisted upon maintaining their several sovereignties by refusing to abandon their own exclusive power of taxation. It was, in fine, an invaluable aid towards getting at the real facts and reading the lessons to be drawn from them. For these very reasons the institution of some continuous consultative body in the British Commonwealth upon which representatives of all the Dominions would be kept in touch with the conduct of their foreign affairs is much to be desired. Yet so long as it is regarded as a dogma that the Constitution of the British Commonwealth can never be reconsidered as a whole, and that organic union can be achieved only by slow and insensible degrees, proposals to establish a merely consultative body will always be met by 'insuperable jealousy.' Nor is that jealousy without reason. The very counsellors who shrink from the thought of ever constructing a Constitution for the British Commonwealth are inevitably committed to the policy of moulding a consultative body little by little into a genuine organ of government. 'First,' it is said, 'let a consultative body be established. Then at a later stage let it be given some super-tax upon imports and perhaps the postal services of the Empire to administer. Thus will an Imperial Council acquire revenue and authority by easy and gradual stages, and the people of the Dominions will be led into restoring to such a body the taxing-powers which the

Imperial Parliament has lost.' But, as any one who studies the records of the Imperial Conference may see, the Dominion representatives have hesitated to accept proposals for establishing some standing Imperial Council largely because they are aware that the idea of making it more than consultative is always lurking behind. It was much the same with the American assemblies from 1775 to 1788. Every proposal made to them to abandon their exclusive power of taxation in detail was treated as Grattan treated Pitt's proposals for settling Anglo-Irish relations, as 'incipient and creeping union,' and ended by arousing a fever of suspicion in the minds of all concerned. Such suspicions were never allayed until it was made clear that no tittle of taxing-power was to be acquired by the existing Congress. When the people of the thirteen States conceded such power it was only to a new body upon which they were represented in the true sense of the word. The Rubicon was crossed and the American Commonwealth created by a deliberate act consciously taken by men knowing what they did and why they did it. And in the British Commonwealth the character of the problem as well as of the people to be dealt with is the same. So long as the methods advocated by Burke hold the field, so long will the Dominion Governments regard proposals to establish a permanent consultative body as attempts to coax them into 'an incipient and creeping union.' Before a consultative body can be established they must be assured that it is not gradually to be moulded into something more. They cannot, indeed, be criticized for insisting that they must always know where their own responsibility ends and where that of an Imperial Council begins; and that they can know only when it is set down in some formal and conclusive instrument of government. If once it were recognized in final and unmistakable

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terms that the Dominions must never be asked to surrender any vestige of their existing authority to a central organ otherwise than by some act as clear, conscious, and final as that taken by the people of the thirteen States in 1788, the suspicion which surrounds the subject would begin to subside, and the creation of some genuine consultative body might then come within measurable reach. The Dominion Assemblies and the British Parliament are alike in this, that they exercise an exclusive power of taxation over the peoples in their own jurisdiction. Such a power is of sovereign quality, a vessel of glass, from which no fragment can be split without breaking the whole. If the thing is to be done, it must be done in the open and once for all. The change can only be effected in a written document as unmistakable in its character as the Constitution of the United States. Such a document, moreover, can only be framed when representatives of all the self-governing States of the Empire meet, as the representatives of the American States met in 1787, for the express purpose of framing it, having first realized that in that way and in no other, a higher freedom can be gained. The advocates of caution would themselves be the first to admit that Parliament can never of its own motion withdraw the exclusive power of taxation acquired by the Dominion assemblies. If ever that power is conceded it can only be to some body, new in fact if not in law, by the deliberate act of the people in the Dominions themselves, done with a conscious intent to realize their citizenship in the greatest Commonwealth that the world has yet seen, and knowing what they sacrifice to realize it. If once this principle be grasped and accepted, the atmosphere will be cleared of the suspicion raised by those who continue to ridicule the only methods by which such problems

have ever reached their final solution. When great issues impend, the counsellors of safety are not those who obscure or evade them, but statesmen like Washington, who perceive their gravity, and nerve men to meet them.

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There is a tradition that Washington remarked, as on September 17, 1787, he appended his signature to the final report of the Convention, 'Should the States reject this excellent Constitution, the probability is that opportunity will never be offered to cancel another in peace; the next will be drawn in blood.'<sup>1</sup> The Constitution was adopted without a struggle, but blood was still destined to flow like water before the principle which inspired it had received its final ratification.

The ultimate sanction of the American Constitution.

At an earlier stage of this inquiry it was suggested that the ultimate problems of politics have their roots in the conditions which arise when the widely differing societies peculiar to the various continents are brought into touch with each other. The question which came within an ace of destroying the American Commonwealth was a case in point. That America should be valued less for the society which it might be made to support than for the products which its soil might be made to yield was an essential characteristic of the commercial system. It was in accordance with the same spirit that Englishmen in common with other Europeans of that age should have regarded the natives of Africa, when first they came into touch with them, simply as a means to their own ends. The practice of shipping negro slaves to develop the soil of America was the natural result. The traffic was one which carried devastation through the length and breadth of tropical Africa. But it also reacted profoundly on the society which relied on slavery by teaching them to regard rough

Strain imposed upon the unity of the American Commonwealth by the co-existence therein of slavery and free labour.

<sup>1</sup> Lodge, *George Washington*, vol. ii. p. 36.

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manual work as beneath the dignity of intelligent and civilized men. Free and slave labour could nowhere exist side by side. The one blotted out the other, and its introduction was prohibited by all the States north of Maryland. There was room, it was thought in 1787, under the federal system for free and slave States to exist in the one Commonwealth side by side. Special provision, however, had been made for the organization of new States in the territories of the West where the United States had inherited a vast field for colonization. To which of the two systems were the new States to belong? To the slave or to the free? Experience was soon to prove that both could not subsist together. The result was that territory organized as a free State was practically closed to colonization from the South, while territory organized as a slave State was equally closed to colonists bred under the labour conditions of the North. It was inevitable, therefore, that an intense rivalry for power in the Federal legislature, which controlled the conditions under which territories should be admitted, should arise between the Northern and Southern States.

The  
Missouri  
com-  
promise.

The first sign of the approaching storm was raised by the proposal in 1820 to admit Missouri as a slave State. 'This momentous question, like a fire-bell in the night awakened and filled me with terror. I considered it at once as the knell of the Union.' Thus wrote Jefferson, the author of the Declaration of Independence. For the time, however, the issues were compromised. Missouri was admitted as a slave State, but its Southern boundary of 36°30' was henceforward to be taken as the frontier between freedom and slavery in the rest of the great territories purchased from Spain under the name of Louisiana.

Amongst the slave States it now became a motive to increase the territories south of 36°30' which from

their climate were also suitable for the extension of slavery. They began to entertain visions of conquest over Mexico, Central America, and Cuba, where slavery was already an established institution.<sup>1</sup> In 1850 the conquest of part of Mexico was actually achieved. So vast were the issues raised by a difference in the principles upon which two European societies in America had based their relations to the primitive natives of the African continent!

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Its effect in instigating the South to a policy of conquest.

Matters were at length brought to an issue in the territory of Kansas where two opposing governments were established by emigrants from the North and South, each demanding admission to the Union, the one as a free State and the other as a slave State. But as the South controlled the Senate and the North the House, nothing could be settled, and Kansas lapsed into a condition of civil war. In 1856 the Democrats were able to elect the President and regain control of the House, so that the whole machinery of the Federal Government was in their hands. There was a strong movement in the South in favour of re-establishing the slave trade with Africa which had been abolished in 1808. In 1859 a large number of negroes were actually smuggled into the Southern States.<sup>2</sup> The North, meantime, had found its leader in Abraham Lincoln, who was elected to the Presidency in 1860. The slave States had lost their control of the Federal Government, and it remained to be seen whether they would recognize its authority now that it rested in the hands of a party pledged to resist the extension of slavery to the new territories.

The conflict brought to a head in Kansas.

Control of the Federal Government secured by the South in 1856, but lost to the North in the election of Lincoln to the Presidency in 1860.

The formal adoption of the Constitution framed in 1787 had scotched but not killed the contractual principle of the previous Confederation. In Virginia

Contractual theory of union revived by the South.

<sup>1</sup> Rhodes, *Lectures on the American Civil War*, pp. 55, 74.

<sup>2</sup> *Ibid.* p. 56.

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1830.

1832.

Secession  
of South  
Carolina,  
on the  
morrow of  
Lincoln's  
election,  
justified  
by the plea  
that the  
North had  
violated  
the  
contract.

Patrick Henry, the old exponent of that theory, had done his best to secure its rejection, and had only been defeated by the overwhelming authority of Washington. But to many in the South the institution of slavery was dearer than that of the American Republic, and they nursed a theory which struck at the root of government itself, because it left the door open to them to repudiate its authority. Thus Hayne of South Carolina had declared that 'Before the Constitution each State was an independent sovereignty, possessing all the rights and powers appertaining to independent nations . . . After the Constitution was formed, they remained equally sovereign and independent as to all powers not expressly delegated to the federal government . . . The true nature of the Federal Constitution, therefore, is . . . a compact to which the States are parties.'<sup>1</sup> It was in virtue of this doctrine that two years later South Carolina had actually threatened to secede rather than submit to the tariff imposed by Congress. The cleavage of opinion between North and South on the fiscal question was itself a consequence of the respective systems of freedom and slavery.

The day after Lincoln's election South Carolina decided on secession, 'The tea has been thrown overboard, the revolution of 1860 has been accomplished.' Such was the cry now raised, and, as in the Revolution of 1775, the people of South Carolina were anticipating an oppression which had not yet been experienced. Her example was quickly followed by that of the six cotton States, popular conventions in each of them calling for immediate secession. The citizens of these States resolved, in fine, that their ultimate obedience should be rendered to the public opinion of their several States and not to that of the American Commonwealth. They reverted to the

<sup>1</sup> Hart, *Formation of the Union, 1750-1829*, p. 133.



theory that the union had been based on a compact between the sovereign States and not, as Hamilton had urged, on the individual dedication of the citizens themselves to the larger Commonwealth. The North, they claimed, had violated the contract, which ceased therefore to be binding on the Southern States. For if, as they argued, the authority of the Union was derived from the sovereignty of the States, the States by virtue of that sovereignty could recall it. All this was the logical outcome of the doctrine propounded by Hayne in 1830.

They were faced, however, by a leader who saw in the Constitution of his country not a contract, but a creed. In his message to Congress of July 4, 1861, Lincoln countered Hayne's doctrine by declaring that 'the Union gave each of them (the States) whatever independence or liberty it has; the Union is older than any of the States, and in fact it created them as States.' In Lincoln's view it was not the States nor yet the Federal Government which was entitled to claim the ultimate obedience of the American citizen. That obedience was due to the United States of America, from which both the Federal Government and the States derived such powers as they possessed. If Lincoln claimed the right to exact the obedience of Americans in the Southern States to the authority of the Federal Government, it was because that government was founded on the sovereignty of the United States. Whether or not that sovereignty was a reality did not depend upon any votes passed, documents signed, or acts done some seventy years before by a generation which was now slumbering in its grave, but upon whether among the living citizens of the United States there could be found a sufficient number zealous enough to respond to its sovereign claim and to devote their property and their lives in vindicating

Sovereignty of the States denied by Lincoln and claimed by him for the United States. Nature of its sanctions illustrated.

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its authority upon those who denied it. And the same was true of those who asserted the sovereignty of the several States. The conduct of government by force was a notion hateful to the American mind. 'A Union,' wrote Lee, the protagonist of the South, 'that can only be maintained by swords and bayonets, and in which strife and civil war are to take the place of brotherly love and kindness, has no charm for me.'<sup>1</sup> The use of force was no less odious to Lincoln. 'The ugly point,' he said, 'is the necessity of keeping the government together by force, as ours should be a government of fraternity.'<sup>2</sup> He realized, however, that a crisis of that supreme order had arrived when a state, be it commonwealth or despotism, can maintain its existence only by making its ultimate claim on the devotion of such citizens as desire that it should continue to exist, the claim to call upon them to exact obedience by force from those who deny its authority and mean that it should perish.

How  
Virginians  
were called  
upon to  
decide  
whether  
their  
loyalty  
was due to  
Virginia or  
to the  
United  
States.

Americans were thus called upon to decide to which of two states their ultimate obedience was due, and it is instructive to see how the practical issue was presented in the parent State of Virginia whence Washington himself had sprung. On March 4, 1861, Lincoln was inaugurated to the Presidency in Washington, and, denying the right of secession, announced that 'he would enforce the law in all the States, using his power to hold the property and places belonging to the government and to collect the taxes and imposts.'<sup>3</sup> Fort Sumter in Charleston Harbour was a post held by Federal troops, and South Carolina was now demanding its surrender. Acting upon the instructions of Lincoln, the commander of

<sup>1</sup> Page, *Life of General Lee*, p. 44.

<sup>2</sup> Rhodes, *Lectures on the American Civil War*, p. 88.

<sup>3</sup> *Ibid.* p. 89.

the garrison refused to obey the summons of the Government of South Carolina to evacuate his post. On April 12, 1861, the batteries of the State Government opened fire and compelled its surrender. Lincoln now called upon the States generally to provide troops for the purpose of vindicating the Federal authority in South Carolina. For some time every one had been watching to see what course the oldest State, which had produced Washington himself, would adopt. The attitude of Virginians in the presence of this crisis is faithfully depicted in the following speech put into the mouth of a Virginian officer in a recent work of historical fiction. The imaginary speaker, Major Cary, is addressing a meeting just before the announcement of Lincoln's intention to hold Fort Sumter.

“Men of Botetourt! I speak for my fellow soldiers of the Army of the United States when I say that, out yonder, we are blithe to fight with marauding Comanches, with wolves and with grizzlies, but that we are not—oh, we are not—ready to fight with each other! Brother against brother—comrade against comrade—friend against friend—to quarrel in the same tongue and to slay the man with whom you've faced a thousand dangers—no, we are not ready for that!

“Virginians! I will not believe that the permanent dissolution of this great Union is come! I will not believe that we stand to-day in danger of internecine War! Men of Botetourt, go slow—go slow! The Right of the State—I grant it! I was bred in that doctrine as were you all. Albemarle no whit behind Botetourt in that! The Botetourt Resolutions—amen to much, to very much in the Botetourt Resolutions! South Carolina! Let South Carolina go in peace! It is her right! Remembering old comradeship, old battlefields, old defeats, old victories, we shall still be

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friends. If the Gulf States go, still it is their right, immemorial, incontrovertible!—The right of self-government. We are of one blood and the country is wide. God-speed both to Lot and to Abraham! On some sunny future day may their children draw together and take hands again! So much for the seceding States. But Virginia—but Virginia made possible the Union—let her stand fast in it in this day of storm! in this Convention let her voice be heard—as I know it will be heard—for wisdom, for moderation, for patience! So, or soon or late, she will mediate between the States, she will once again make the ring complete, she will be the saviour of this great historic Confederation which our fathers made!”

‘A minute or two more and he ended his speech. As he moved from between the pillars, there was loud applause. The county was largely Whig, honestly longing—having put on record what it thought of the present mischief and the makers of it—for a peaceful solution of all troubles. As for the army, county and State were proud of the army, and proud of the Virginians within it. It was amid cheering that Fauquier Cary left the portico. At the head of the steps, however, there came a question. “One moment, Major Cary! What if the North declines to evacuate Fort Sumter? What if she attempts to reinforce it? What if she declares for a *compulsory* Union?”

‘Cary paused a moment. “She will not, she will not! There are politicians in the North whom I’ll not defend! But the people—the people—the people are neither fools nor knaves! They were born North and we were born South, and that is the chief difference between us! A *Compulsory* Union! That is a contradiction in terms. Individuals and States, harmoniously minded, unite for the sweetness of Union and for the furtherance of common interests.

When the minds are discordant, and the interests opposed, one may be bound to another by Conquest—not otherwise! What said Hamilton? *To coerce a State would be one of the maddest projects ever devised!*”<sup>1</sup>

No one can fail to be impressed by the sweet reasonableness of the plea that force should not be used by the North to restrain the liberty of any State desiring to secede. To the American mind it had become almost unthinkable that one part of America could coerce another. But supposing that this view had prevailed with the Northern States, and they had said to the Southern States, ‘We think you wrong to secede, but it would be more wrong in us to shed blood in order to prevent your secession.’ The matter could scarcely have rested there. It must inevitably have become a recognized principle of American life that force was not to be used to restrict the liberty of secession. The process would not have been ended by the division of the States into two federations. Before long the Western States would have raised the same claim, and the Eastern States would already have surrendered the right to question its validity. The same precedent would have been fatal to the integrity of the Southern Confederation itself. North America would have been broken up into a welter of republics, some slave and some free, divided by interests at least as contentious as those of Europe. Questions now settled by the Federal Government or the Supreme Court acting under the sanction of a common sovereignty would have found no arbitrament but that of war, and North America would inevitably have repeated the experience of medieval Germany and of the Latin Republics. Liberty, in any valid

How the denial of the right to prevent secession by force would have been fatal to liberty in America.

<sup>1</sup> Mary Johnston, *The Long Roll*, pp. 10-11. The authoress is daughter of the distinguished Southern general.

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sense of the word, would have perished, as in Germany or Mexico, amid the endless strife of communities which could only have held their own while armed to the teeth. Americans would have lost the character of a civilian people. To picture such conditions is to see how intimately the cause of liberty is bound up with the maintenance of the sovereignty of a great state, and how that cause is sacrificed when men shrink from the ordeal of enforcing that sovereignty even from the height of the gallows or at the point of the sword.

The  
inexorable  
choice  
forced on  
Virginians.

Lincoln's determination to reinforce Fort Sumter and the conflict which followed determined the majority of Virginians in favour of South Carolina, and the Government of Virginia now called upon its people to arm themselves in support of its right to secede from the Union. Simultaneously President Lincoln was calling upon them as citizens of the United States to take up arms in order to resist those very claims. There was, however, in Virginia itself a substantial minority which responded to Lincoln's call in spite of the fact that many of them approved the institution of slavery. The ultimate issue which divided Americans was not their preference for slavery or freedom, but the question which each must answer for himself, whether their final allegiance was due to the Government of their State or to that of the United States of America. It was a conflict of ideals, a question of conscience on both sides, for no one can doubt the sincerity with which men like Lee, Jackson, and those who followed them, placed their lives at the disposal of the Virginian Government. The choice presented to an inhabitant of Virginia was clear, but inexorable. On the one hand he was called upon by the Government of the United States to enforce its authority, on the other hand he was ordered by the Government of Virginia

to resist the authority of the United States. He had then to face the alternative, which of these two Commonwealths was the one to which his ultimate obedience was due—the very alternative which had had to be faced eighty years before by Americans at the time of the Revolution.

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Such was, in fact, the predicament of Robert E. Lee, who at the head of the Southern armies showed himself the greatest soldier who had taken the field since the days of Napoleon. Never perhaps has the necessity laid upon a man to decide where his citizenship lay been reduced to a finer point. Lee had been educated as an officer in the army of the United States at the Federal Academy founded by Washington at West Point. As a Federal officer he fought in the Mexican war and he had already established his reputation as a military leader. When the Civil War was impending Lincoln offered Lee the command of the Federal forces.<sup>1</sup> Lee was opposed to secession and still hoped that the peace might be kept, but he saw at once that he was face to face with a choice which could not be evaded, and, recognizing its nature, wrote telling his son that he was not to be guided by his father's wishes or example, but merely by his own judgment, reason, and conscience.<sup>2</sup> His own decision was none the less scrupulous because it was clearly influenced by the family traditions. His father had once been governor of Virginia, and had supported the ratification of the Constitution of the United States. But he had always declared that Virginia was his country. 'Her will I obey,' he said, 'however lamentable the fate to which it may subject me'; and to Madison he wrote, 'no consideration on earth could induce me to act a part, however gratifying to me, which could be construed into disregard of,

Character  
of the  
choice as  
viewed by  
Robert E.  
Lee.

<sup>1</sup> Page, *Life of General Lee*, pp. 32-3.

<sup>2</sup> *Ibid.* p. 52.

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Growth of  
public  
spirit in  
America  
as proved  
by the  
sacrifices  
made in  
the Civil  
War.

or faithlessness to, this Commonwealth.’<sup>1</sup> To that same commonwealth of Virginia his son, seventy years later, decided that his own allegiance was due. Not only did he refuse Lincoln’s offer, but resigned his position in the Federal army, because, as he told a committee of Congress after the war, ‘he believed that the act of Virginia in withdrawing herself from the United States carried him along with it as a citizen of Virginia, and that her laws and acts were binding upon him.’<sup>2</sup>

The claims of North and South alike met with a response strangely different from that which had been made to the appeals of Washington. That greatest of national leaders had been left to recruit his ranks from men not bred in America, and to depend on revenues which had not been earned there. But now when his work was threatened with destruction Americans were ready to pour out their blood and treasure to preserve it. The Civil War is estimated to have cost America close upon \$10,000,000,000 and 1,000,000 lives.<sup>3</sup> ‘In truth,’ says Lecky, ‘the American people, though in general unbounded believers in progress, are accustomed, through a kind of curious modesty, to do themselves a great injustice by the extravagant manner in which they idealise their past. It has almost become a commonplace that the great nation which in our own day has shown such an admirable combination of courage, devotion, and humanity in its gigantic civil war, and which since that time has so signally falsified the predictions of its enemies, and put to shame all the nations of Europe by its unparalleled efforts in paying off its national debt, is of a far lower moral type than its ancestors at the time of the War of

<sup>1</sup> Page, *Life of General Lee*, p. 38.

<sup>2</sup> Report of Joint Committee on Reconstruction, 1st Sess., 39th Cong., p. 123, quoted by Page, *General Lee*, pp. 53-4.

<sup>3</sup> Seeley, *The Expansion of England*, p. 182.



Independence. This belief appears to me essentially false. The nobility and beauty of the character of Washington can indeed hardly be surpassed; several of the other leaders of the Revolution were men of ability and public spirit, and few armies have ever shown a nobler self-devotion than that which remained with Washington through the dreary winter at Valley Forge. But the army that bore those sufferings was a very small one, and the general aspect of the American people during the contest was far from heroic or sublime.'<sup>1</sup>

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It is clear that American society as depicted by Washington was incapable of any such sacrifice in the public cause, as was made less than three generations later in response to the call of Abraham Lincoln. Had the question of slavery come to a head two generations earlier, the attempt to coerce seceding States would have been treated as wickedness and folly, and the Union would infallibly have dissolved. This contrast which so impressed the great historian of the eighteenth century is not hard to explain. Till the close of that century, as Beer has shown, the whole standard of public life in America had been poisoned by the system under which it had developed. Before 1775 the colonists had lived under a Commonwealth which thought to bind them to itself merely by the protection it afforded, without giving them a direct responsibility for the safety of the Commonwealth itself. By nature the colonists were just as capable of such responsibility as their kinsmen in Britain; but except in provincial affairs they had never been subjected to the discipline of freedom. That discipline was never really experienced till after 1788, when a Commonwealth was established from whose primary responsibilities no class of citizens were ever to be excluded irrespective of their fitness

The difference only explicable by the regenerating effect on national character of responsibility.

<sup>1</sup> Lecky, *History of England in the Eighteenth Century*, vol. iv. pp. 485-6.

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and merely by reason of the particular locality in which they dwelt. Henceforward all classes admitted to political power, whether in the States themselves or in the Western colonies, were to share alike in vindicating the authority of the Republic whether against aggression from without or schism from within. And the result had proved once more that it is not by self-interest that States are knit, but by a sense of obligation which unless it is exercised withers away and flourishes only so far as it is called into action. Under a system which imposed upon Americans the real burdens of statehood, patriotism grew as fast as it had languished under systems which had failed to impose them. No leader comparable to Washington was found to direct the armies of the North. Its ultimate success after many reverses was the product not of military genius backed by a handful of patriots, but of the patriotism of Americans themselves. The common saying that you cannot make people virtuous by law is a dangerous half-truth. The virtue innate in a people may be utterly destroyed by bad institutions, for 'the virtue,' as Jay wrote to Washington, 'like the other resources of a country, can only be drawn to a point, by strong circumstances ably managed, or strong governments ably administered.'

The principle of the commonwealth as expounded by Lincoln in his speech at Gettysburg.

Thus was a commonwealth on a scale undreamt of in the philosophy of the Greeks finally cemented in the blood of its citizens. To the old immeasurable claim men more in number than the walls of Athens had ever contained were found to make the same unquestioning answer. At Gettysburg, with its fifty thousand graves, a vast concourse of Americans was addressed by Lincoln in words which recalled the speech uttered by Pericles at the funeral of those who had given their lives for the Athenian Commonwealth in the Peloponnesian War.<sup>1</sup>

<sup>1</sup> See above, p. 20.

‘Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

‘Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field, as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

‘But, in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here have consecrated it, far above our poor power to add or detract. The world will little note, nor longer remember, what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.’<sup>1</sup>

<sup>1</sup> Brooks, *Abraham Lincoln*, p. 378.

## NOTE A

WASHINGTON'S LETTER TO CONGRESS AFTER THE AMERICAN DEFEAT ON LONG ISLAND URGING THE NECESSITY OF A PERMANENT ARMY. PROPORTIONS IN WHICH CONTINGENTS WERE TO BE FURNISHED BY THE SEVERAL STATES.

See page  
554.

‘The state of the army, after this event, was, in a letter from General Washington to Congress, thus feelingly described : “Our situation is truly distressing. The check our detachment sustained, on the 27th ultimo, has dispirited too great a proportion of our troops, and filled their minds with apprehension and despair. The militia, instead of calling forth their utmost efforts to a brave and manly opposition, in order to repair our losses, are dismayed, intractable, and impatient to return. Great numbers of them have gone off; in some instances, almost by whole regiments; in many, by half ones, and by companies, at a time. This circumstance, of itself, independent of others, when fronted by a well-appointed enemy, superior in number to our whole collected force, would be sufficiently disagreeable; but, when it is added, that their want of discipline, and refusal of almost every kind of restraint and government, have rendered a like conduct but too common in the whole, and have produced an entire disregard of that order and subordination necessary for the well-doing of an army, and which had been before inculcated as well as the nature of our military establishment would admit, our condition is still more alarming, and, with the deepest concern, I am obliged to confess my want of confidence in the generality of the troops.

“All these circumstances fully confirm the opinion I ever entertained, and which I, more than once, in my letters, took the liberty of mentioning to Congress, that no dependence could be put in a militia, or other troops, than those enlisted and embodied for a longer period than our regulations have hitherto prescribed. I am persuaded, and am as fully convinced as of any one fact that has happened, that our liberties must, of necessity, be greatly hazarded, if not entirely lost, if their defence be left to any but a permanent army.

“Nor would the expense incident to the support of such a body of troops as would be competent to every exigency, far exceed that which is incurred by calling in daily succours, and new enlistments, which, when effected, are not attended with any good consequences. Men, who have been free, and subject to no control, cannot be reduced to order in an instant; and the privileges and exemptions they claim, and will have,

influence the conduct of others in such a manner, that the aid derived from them is nearly counterbalanced by the disorder, irregularity, and confusion, they occasion."

'The frequent remonstrances of the Commander in Chief, the opinions of all military men, the severe correcting hand of experience, had, at length, produced their effect on Congress; and, soon after the defeat on Long Island, it had been referred to the committee, composing the Board of War, to prepare a plan of operations for the next succeeding campaign. Their report, which was adopted by Congress, proposed a permanent army, to be enlisted for the war, and to be composed of eighty-eight battalions, to be raised by the several states in proportion to their ability.\* As an inducement to enlist, a bounty of twenty dollars was allowed, and small portions of vacant lands promised to every officer and soldier.

'Had this system been adopted in 1775, the war would probably have been of much shorter duration; but much is to be allowed for the want of military experience in Congress; for prejudices which prevailed throughout America; and very much for the organization of the government, which, while the essentials of power were parcelled out among the several local legislatures, placed, in that of the union, little more than the right to recommend, a right to be exercised with great caution—because measures, manifesting an expectation that the war might be of long continuance, or which might excite a suspicion of aiming at independence, or of an indisposition to a re-establishment of the antient connexion between Great Britain and America might, in the early stage of the contest, have produced very serious consequences in some parts of the union.'

* New Hampshire . . . . .	3
Massachusetts . . . . .	15
Rhode Island . . . . .	2
Connecticut . . . . .	8
New York . . . . .	4
New Jersey . . . . .	4
Pennsylvania . . . . .	12
Delaware . . . . .	1
Maryland . . . . .	8
Virginia . . . . .	15
North Carolina . . . . .	9
South Carolina . . . . .	6
Georgia . . . . .	1
	<hr/>
	88
	<hr/>

<sup>1</sup> Marshall, *Life of Washington*, vol. ii. pp. 526-9.

## NOTE B

SEA POWER AS THE DETERMINING FACTOR IN THE  
WAR OF INDEPENDENCESee page  
561.

'Before quitting that struggle for independence, it must again be affirmed that its successful ending, at least at so early a date, was due to the control of the sea,—to sea power in the hands of the French, and its improper distribution by the English authorities. This assertion may be safely rested on the authority of the one man who, above all others, thoroughly knew the resources of the country, the temper of the people, the difficulties of the struggle, and whose name is still the highest warrant for sound, quiet, unfluttered, good-sense and patriotism.

'The keynote to all Washington's utterances is set in the "Memorandum for concerting a plan of operations with the French army," dated July 15, 1780, and sent by the hands of Lafayette:—

"The Marquis de Lafayette will be pleased to communicate the following general ideas to Count de Rochambeau and the Chevalier de Ternay, as the sentiments of the underwritten :

"I. *In any operation, and under all circumstances, a decisive naval superiority is to be considered as a fundamental principle, and the basis upon which every hope of success must ultimately depend.*"

'This, however, though the most formal and decisive expression of Washington's views, is but one among many others equally distinct. Thus, writing to Franklin, December 20, 1780, he says:—

"Disappointed of the second division of French troops [blockaded in Brest], but more especially in the expected naval superiority, which was the pivot upon which everything turned, we have been compelled to spend an inactive campaign after a flattering prospect at the opening of it. . . . Latterly we have been obliged to become spectators of a succession of detachments from the army at New York in aid of Lord Cornwallis; while our naval weakness, and the political dissolution of a large part of our army, put it out of our power to counteract them at the southward, or to take advantage of them here."

'A month later, January 15, 1781, in a memorandum letter to Colonel Laurens, sent on a special mission to France, he says:—

"Next to a loan of money, a constant naval superiority upon

these coasts is the object most interesting. This would instantly reduce the enemy to a difficult defensive. . . . Indeed, it is not to be conceived how they could subsist a large force in this country, if we had the command of the seas to interrupt the regular transmission of supplies from Europe. This superiority, with an aid in money, would enable us to convert the war into a vigorous offensive. With respect to us it seems to be one of two deciding points."

"In another letter to the same person, then in Paris, dated April 9, he writes:—

"If France delays a timely and powerful aid in the critical posture of our affairs, it will avail us nothing, should she attempt it hereafter. . . . Why need I run into detail, when it may be declared in a word that we are at the end of our tether, and that now or never our deliverance must come? How easy would it be to retort the enemy's own game upon them, if it could be made to comport with the general plan of the war to keep a superior fleet always in these seas, and France would put us in condition to be active by advancing us money."

"Ships and money are the burden of his cry. May 23, 1781, he writes to the Chevalier de la Luzerne: "I do not see how it is possible to give effectual support to the Southern States, and avert the evils which threaten, while we are inferior in naval force in these seas." As the season for active operations advances, his utterances are more frequent and urgent. To Major General Greene, struggling with his difficulties in South Carolina, he writes, June 1, 1781: "Our affairs have been attentively considered in every point of view, and it was finally determined to make an attempt upon New York, in preference to a Southern operation, as we had not decided command of the water." To Jefferson, June 8: "Should I be supported in the manner I expect, by the neighboring States, the enemy will, I hope, be reduced to the necessity of recalling part of their force from the southward to support New York, or they will run the most imminent risk of being expelled from that post, which is to them invaluable; and should we, by a lucky coincidence of circumstances, gain a naval superiority, their ruin would be inevitable. . . . While we remain inferior at sea . . . policy dictates that relief should be attempted by diversion rather than by sending reinforcements immediately to the point in distress," that is, to the South. To Rochambeau, June 13: "Your Excellency will recollect that New York was looked upon by us as the only practicable object under present circumstances; but should we be able to secure a naval superiority, we may perhaps find others more practicable and equally advisable." By the 15th of August the letters of De Grasse announcing his sailing for the Chesapeake were received, and the correspondence

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of Washington is thenceforth filled with busy preparations for the campaign in Virginia, based upon the long-delayed fleet. The discouragement of De Grasse, and his purpose to go to sea, upon learning that the English fleet in New York had been reinforced, drew forth an appealing letter dated September 25, which is too long for quotation; but the danger passed, Washington's confidence returns. The day after the capitulation he writes to De Grasse: "The surrender of York . . . *the honor of which belongs to your Excellency*, has greatly anticipated [in time] our most sanguine anticipations." He then goes on to urge further operations in the South, seeing so much of the good season was still left: "The general naval superiority of the British, previous to your arrival, gave them decisive advantages in the South, in the rapid transport of their troops and supplies; while the immense land marches of our succors, too tardy and expensive in every point of view, subjected us to be beaten in detail. It will depend upon your Excellency, therefore, to terminate the war." De Grasse refusing this request, but intimating an intention to co-operate in the next year's campaign, Washington instantly accepts: "With your Excellency I need not insist upon the indispensable necessity of a maritime force capable of giving you an absolute ascendancy in these seas. . . . You will have observed that, whatever efforts are made by the land armies, the navy must have the casting vote in the present contest." A fortnight later, November 15, he writes to Lafayette, who is on the point of sailing for France:—

"As you expressed a desire to know my sentiments respecting the operations of the next campaign, I will, without a tedious display of reasoning, declare in one word that it must depend absolutely upon the naval force which is employed in these seas, and the time of its appearance next year. No land force can act decisively unless accompanied by a maritime superiority. . . . A doubt did not exist, nor does it at this moment, in any man's mind, of the total extirpation of the British force in the Carolinas and Georgia, if Count de Grasse could have extended his co-operation two months longer."

'Such, in the opinion of the revered commander-in-chief of the American armies, was the influence of sea power upon the contest which he directed with so much skill and such infinite patience, and which, amidst countless trials and discouragements, he brought to a glorious close.

'It will be observed that the American cause was reduced to these straits, notwithstanding the great and admitted losses of British commerce by the cruisers of the allies and by American privateers. This fact, and the small results from the general war, dominated as it was by the idea of commerce-destroying,



show strongly the secondary and indecisive effect of such a policy upon the great issues of war.'<sup>1</sup>

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## NOTE C

### ARTICLES OF CONFEDERATION FRAMED BY CONGRESS IN 1776 AND ADOPTED BY THE STATES, FEBRUARY 1781

Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. See page 602.

ARTICLE I. The style of this Confederacy shall be "The United States of America."

ART. II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled. See page 551.

ART. III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he

<sup>1</sup> Mahan, *Influence of Sea Power upon History*, pp. 397-400.

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fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years, nor shall any person, being a delegate, be capable of holding any office under the United States for which he or another for his benefit receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to or from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ART. VI. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state,

in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

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No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as in the judgment of the United States in Congress assembled shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ART. VII. When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. All charges of war and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, and such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the

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several States within the time agreed upon by the United States in Congress assembled.

ART. IX. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever ; which authority shall always be exercised in the manner following :—Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question ; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen ; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination ; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or, being present, shall refuse to strike, the

Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried, "*well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward,*" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdictions as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to

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consist of one delegate from each State ; to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction ; and to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State ; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled ; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared : and the officers and men, so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same ; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy, and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with: provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI. Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

AND WHEREAS it hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress to approve of and to authorize us to ratify the said Articles of Confederation and perpetual Union, KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said

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Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents that they shall abide by the determinations of the United States in Congress assembled, on all questions which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and the Union shall be perpetual.

## NOTE D

THE FEDERAL CONSTITUTION AS AGREED UPON BY THE  
CONVENTION, SEPTEMBER 17, 1787<sup>1</sup>

*We, the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.*

## ARTICLE I.

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SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECT. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the electors of most numerous branch of the State legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representa-

<sup>1</sup> For the text of the Constitution and for the first fifteen amendments thereto see Appendix to Lodge's edition of *The Federalist*.



tive ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers ; and shall have the sole power of impeachment.

SECT. 3. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years ; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, the second class at the expiration of the fourth year and the third class at the expiration of the sixth year, so that one third may be chosen every second year ; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside. And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States ; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

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SECT. 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. 5. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session or their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECT. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to

that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECT. 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States: but all duties, imposts, and excises, shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

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To provide and maintain a navy ;

To make rules for the government and regulation of the land and naval forces ;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions ;

To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ; And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECT. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand. eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

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No bill of attainder or *ex-post-facto* law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the *census* or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another ; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States : And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any

present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

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SECT. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex-post-facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

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No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net proceeds of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duties of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

SECT. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and

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if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation :

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECT. 2. The President shall be commander-in-chief of the army and navy of the United States; and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECT. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECT. 4. The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III.

SECT. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECT. 2. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizen of another State; between citizens of different States; between citizens of the same State claiming

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lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

## ARTICLE IV.

SECT. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECT. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.



The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECT. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the Executive (when the legislature cannot be convened), against domestic violence.

#### ARTICLE V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

#### ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

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## ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President, and Deputy from Virginia.*

NEW-HAMPSHIRE. . . { JOHN LANGDON,  
NICHOLAS GILMAN.

MASSACHUSETTS. . . { NATHANIEL GORHAM,  
RUFUS KING.

CONNECTICUT. . . { WILLIAM SAMUEL JOHNSON,  
ROGER SHERMAN.

NEW YORK. . . . { ALEXANDER HAMILTON.

NEW JERSEY. . . . { WILLIAM LIVINGSTON,  
DAVID BREARLEY,  
WILLIAM PATERSON,  
JONATHAN DAYTON.

PENNSYLVANIA. . . { BENJAMIN FRANKLIN,  
THOMAS MIFFLIN,  
ROBERT MORRIS,  
GEORGE CLYMER,  
THOMAS FITZSIMONS,  
JARED INGERSOLL,  
JAMES WILSON,  
GOUVERNEUR MORRIS.

DELAWARE. . . . { GEORGE READ,  
GUNNING BEDFORD, Junior,  
JOHN DICKINSON,  
RICHARD BASSETT,  
JACOB BROOM.

MARYLAND. . . . { JAMES M'HENRY,  
DANIEL JENIFER, of St. Thomas,  
DANIEL CARROLL.

VIRGINIA. . . . { JOHN BLAIR,  
JAMES MADISON, Junior.

NORTH CAROLINA. . { WILLIAM BLOUNT,  
RICHARD DOBBS SPAIGHT,  
HUGH WILLIAMSON.

SOUTH CAROLINA. . { JOHN RUTLEDGE,  
CHARLES COTESWORTH PINCKNEY,  
CHARLES PINCKNEY,  
PIERCE BUTLER.

GEORGIA . . . . . { WILLIAM FEW,  
ABRAHAM BALDWIN.

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Attest.

WILLIAM JACKSON, *Secretary.*

## IN CONVENTION.

MONDAY, September 17, 1787.

PRESENT, *The States of New-Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same should give notice thereof to the United States in Congress assembled.

*Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that after such publication the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed, and directed, as the Constitution requires, to the secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the Senate, for the sole purpose of receiving, opening, and counting the votes for President; and that after he shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

*By the unanimous order of the convention.*

GEORGE WASHINGTON, *President.*

WILLIAM JACKSON, *Secretary.*

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See page  
615.

## AMENDMENTS TO THE CONSTITUTION.

The first *ten* amendments were proposed in Congress during its *first* session, and on the 15th of December, 1791, were ratified. The *eleventh* amendment was proposed during the *first* session of the *third* Congress, and was announced by the President of the United States in a message to it, of date January 8th, 1798, as having been ratified. The *twelfth* amendment originated with Hamilton, and was proposed during the *first* session of the *eighth* Congress, and was adopted in 1804.

## ARTICLE THE FIRST.

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## ARTICLE THE SECOND.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE THE THIRD.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law.

## ARTICLE THE FOURTH.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE THE FIFTH.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of

life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

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#### ARTICLE THE SIXTH.

In all criminal prosecutions the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

#### ARTICLE THE SEVENTH.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise reëxamined in any court of the United States than according to the rules of the common law.

#### ARTICLE THE EIGHTH.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### ARTICLE THE NINTH.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

#### ARTICLE THE TENTH.

The powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States respectively, or to the people.

#### ARTICLE THE ELEVENTH.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

#### ARTICLE THE TWELFTH.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom at

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least, shall not be an inhabitant of the same State with themselves ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President ; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate ; the president of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted ; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed ; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President ; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The following amendment was ratified by Alabama, December 2, 1865, which filled the requisite complement of ratifying States, and was certified by the Secretary of State to have become valid as a part of the Constitution of the United States, December 18, 1865.

## ARTICLE THE THIRTEENTH.

SECT. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been

duly convicted, shall exist within the United States, or any place subject to their jurisdiction. CHAP. VIII

SECT. 2. Congress shall have power to enforce this article by appropriate legislation.

The following amendment was certified by the Secretary of State to have become valid as a part of the Constitution of the United States, July 28, 1868.

#### ARTICLE THE FOURTEENTH.

SECT. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECT. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECT. 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

SECT. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation

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incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECT. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The following amendment was proposed to the legislatures of the several States by the fortieth Congress, on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States.

## ARTICLE THE FIFTEENTH.

SECT. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SECT. 2. Congress shall have power to enforce this article by appropriate legislation.

The following amendment was passed by Congress on July 15, 1909, and on Feb. 25, 1913, was certified by the Secretary of State to have received ratification by the necessary three fourths of the whole number of States, and therefore as being valid as a part of the Constitution of the United States.

## ARTICLE THE SIXTEENTH.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The following amendment was passed by Congress on May 15, 1912, and was certified by the Secretary of State on May 31, 1913, to have been ratified and become valid as a part of the Constitution of the United States.

## ARTICLE THE SEVENTEENTH.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in



each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

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VIII

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies; *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

## CHAPTER IX

### THE SCHISM OF THE COMMONWEALTH IN ITS AFTER EFFECTS

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IX

Lincoln's  
work in  
saving the  
freedom  
estab-  
lished by  
Washing-  
ton.

HAD Lincoln failed, and had Lee been able to vindicate the principle which determined his own conduct, the work of Washington must have been undone. American society would have dissolved once more into a congeries of sovereign states, whose common interests and mutual disputes would have been subject to no general law, but only, where agreement failed, to the settlement of force. America would have had no law binding upon all and yet capable of being moulded by the experience and opinion of all, and, until the edifice raised by Washington had been restored, the government of American affairs by Americans for Americans would have perished from the soil on which they live.

The union  
of colonies  
a step  
towards  
freedom,  
but not  
their  
secession  
from the  
parent  
Common-  
wealth.

The real contribution of Americans to the cause of freedom was the effective union of all their states in one greater Commonwealth, and the efforts and sacrifices by which the union of that Commonwealth was preserved. The practice, however, of confusing the revolution which severed the colonies from the parent Commonwealth with this subsequent achievement, has led historians to treat the great schism as itself a notable step in the progress of freedom. At a moment when the liberties of the world are trembling in the balance, it is time to reconsider that judgment. In assisting the American colonies to revolt from the

parent Commonwealth the French monarchy was concerned merely to divide the forces opposed to autocracy against themselves. It succeeded, but the blow recoiled to hasten the downfall of the tottering throne from which it was aimed. But something more than the destruction of monarchy—a change in the national character itself—was necessary for the achievement of freedom in France. A new and far more powerful autocracy was raised by Napoleon on the ruins of the Bourbon throne, and before the close of the century the British Commonwealth was plunged once more into a struggle, upon the issue of which the world's freedom as well as its own existence depended.

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For twenty years that issue hung upon the margin of superior power which the British fleets were able to maintain on the sea. But Napoleon could never have succeeded so far, nor would it have taken so long to defeat him, had the resources of Anglo-Saxon society on both sides of the Atlantic been united against him. As it was, the Americans, not understanding the issues at stake, and misled by the catchwords of the French Revolution, ended by ranging their sea-power on Napoleon's side. In spite of its mutilation the British Commonwealth survived, and in saving freedom for itself saved it for Europe as well as for America. That phase of the struggle was closed, not merely by the victories of Trafalgar and Waterloo, but still more by the subsequent development in France itself of the habits essential to free institutions.

The Napoleonic wars a struggle for freedom in which the British Commonwealth was opposed rather than supported by that of America.

The conflict, in truth, was one between principles rather than peoples. In England there had developed a system different from any in Europe, and strong enough to claim a share in the world opened by Henry the Navigator. Its future existence depended on its power to assert that claim; and the issue of the conflict

Revival of the principle of autocracy in central Europe.

CHAP.  
IX

1848.

1870.

was to determine whether the principle of autocracy or that of freedom was to prevail in the outer world. From the moment when the Spanish Armada left the Tagus, till eleven battered hulks of Napoleon's fleet reeled from Trafalgar into Cadiz, that issue was at stake. There and at Waterloo it was settled outright, so far as the Powers of Western Europe were concerned, and the Anglo-Saxon world went on its way as though there was nobody else to open it. Close upon a century was to pass before it was realized that Europe had been destined to a new birth of autocracy at its centre. In the history of the struggle for the mastery of the seas the name of that race before which Rome trembled in her rise and bowed in her decay, is conspicuous by its absence. That Germany, as such, took no part in it, was, says the pupil and successor of Bismarck, 'a prolonged national misfortune, not due to foreigners, but our own fault.'<sup>1</sup> The Germans, organized as a counterfeit state, were blinded to their own essential disunion. Nor had they for the same reason acquired the faculty whereby government is rendered amenable to public opinion.<sup>2</sup> The convention of a German national Parliament at Frankfort was an attempt to establish popular government and unite Germany by general consent. The attempt was a signal failure, and the union of Germany twenty years later was the work of the Prussian dynasty, accomplished by force.

<sup>1</sup> von Bülow, *Imperial Germany*, p. 111.

<sup>2</sup> 'I once,' says Prince Bernhard von Bülow, an ex-Chancellor of the Empire, 'had a conversation on this subject with the late Ministerial Director Althoff. "Well, what can you expect?" replied that distinguished man in his humorous way. "We Germans are the most learned nation in the world, and the best soldiers. We have achieved great things in all the sciences and arts: the greatest philosophers, the greatest poets and musicians are Germans. Of late we have occupied the foremost place in the natural sciences and in almost all technical spheres, and in addition to that we have accomplished an enormous industrial development. How can you wonder that we are political asses? There must be a weak point somewhere."—von Bülow, *Imperial Germany*, p. 106.

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Belated  
statehood  
of the  
German  
nation the  
achievement  
of  
monarchy.

In 1870 a government which could claim to be that of the German people acquired a voice in the councils of modern Europe for the first time. The immediate results were sufficient to show how seriously the lack of German control over German affairs had affected the peace of all Europe; for the union was followed by forty years of repose, which was broken only in the Balkan Peninsula. At peace with herself, Germany was at length able to develop her natural resources. For the first time free play was given to the inborn vigour, intelligence, and industry of the people. Their wealth increased by leaps and bounds, and with it the strength of their military forces. A nation, which had never been able to speak and act as one, suddenly found itself a power second to none in the councils of Europe. What the German people had failed to effect by mutual consent, their strongest dynasty had accomplished by force of arms. The prestige of autocracy was immensely enhanced by the achievement, and behind the transparent screen of an assembly elected by universal suffrage, German statehood was established on the power of a monarchy backed by the strongest army which the world has seen.

The result was that instead of public opinion controlling Government the best-educated people in Europe were content that Government should mould public opinion. So recently as 1913 Dr. Walther Rathenau, a man no less distinguished in the world of culture than in the field of industry, expressed himself to a French interviewer as unable to understand a political system which allowed public opinion to influence policy. 'Many of the elements,' he remarked, 'in your social and moral life escape us. For instance, we are not, as you are, in the habit of reckoning with public opinion. With us it does not count for anything. Opinion has never had any

Success  
of the  
German  
autocracy  
in con-  
trolling  
public  
opinion.

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effect on a policy. It resembles rather the chorus of antiquity which looks on and comments on an action unfolding around it. I should compare it to a crowd that accompanies, but is not admitted to the game. It is, therefore, very difficult for us to grasp the mechanism of a public opinion that intervenes in everything, and reigns in politics, in administration, in the army, and is even allowed access to the courts of justice. To us it is absolutely inconceivable.’<sup>1</sup>

That Government in Germany does not look to public opinion is only one-half the truth. The Prussian autocracy would never have been able to effect or maintain the union had it not seen that the opinion of the most intelligent, educated, and virile people in Europe could not be ignored. Bismarck recognized this, but he also knew that for a people so far developed in other directions their instinct for freedom was singularly weak. In the long struggle of the States for separate existence military despotism had, with the exception of some free cities like Hamburg, been accepted as a necessary form of government, and under its tutelage the German character acquired a curious docility. Public opinion was itself amenable to direction from above. The Press Bureau established by Bismarck was but one of the means expressly devised to secure that people should think what the Government wished they should think. Another, at once more subtle and powerful, is the control which Government has over education. The advice which von Treitschke gave to a young professor, who aspired to success in the world of learning, was above all things to be ‘governmental.’ Independence of mind, so far as politics are concerned, is a fatal bar to success in the field of learning; yet nowhere else do professors enjoy so high a prestige or exercise so decisive an influence on the public mind.

<sup>1</sup> Bourdon, *The German Enigma*, pp. 128-9.

It is this docility of a vigorous and intelligent people, turned to its own uses by an indefatigable Government, which explains why a legislature, elected by universal suffrage, with full control of supply, has never secured an executive responsible to itself. Of course that assembly has not always been willing to adopt the measures of the Government. Yet whenever a deadlock has threatened, the Government has appealed to the people, and so far a majority has always been found to support it against legislators of their own previous choice. That a people in the forefront of civilization should produce the most powerful autocracy ever seen in the modern world is a singular phenomenon, and centuries of disunion suddenly ended by the master-strokes of the Prussian dynasty furnish the key to it.

Between such a system and those in which public opinion is the guiding as well as the actuating force, a spiritual conflict is inherent. Unquestionably the progress which government by public opinion has made in Europe is mainly due to the infectious example of the British and American Commonwealths. It is they which have acted as 'seminaries to seditious parliaments,'<sup>1</sup> inspiring the French Revolution, which in turn excited a demand for constitutions in Germany itself, and obliged Government to devise expedients for keeping public opinion in control. With a people so intelligent such expedients were bound to fail sooner or later. A time was certain to come when the electorate would close its ears to the appeals of the Government and return a legislature pledged to refuse them; and whenever this happened the autocracy must either yield to responsible government or else suspend the constitution. The Emperor must face the two alternatives.

Recur-  
rence of  
the  
conflict  
between  
the prin-  
ciple of  
despotism  
and that  
of the  
Common-  
wealth.

<sup>1</sup> See above, p. 199, and also the passage quoted from Woodrow Wilson, p. 76.

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He must either renounce his claim that he is answerable to God rather than man, and bow to the majority, or else the majority must bow to the armies which look to the War-lord as their chief. The balance between an autocracy and a popular legislature is in the long run just as impossible to maintain in Germany as in any other part of the civilized world. The one must encroach upon the other, and until commonwealths are blotted from existence and their memory forgotten among men, their example will continue to dissolve the primitive and supernatural ideas which afford the only moral foundations upon which the principle of autocracy can rest. Its immediate basis, however, is military force, and the readiness of an army to obey the man at its head rather than the law, in the event of a conflict between the two, will decline unless it is occasionally exercised in war. Fear of a peace too long unbroken which inspired the first and third Napoleon prevails no less in those sections of Prussian society which uphold the principle of personal rule.<sup>1</sup>

To commonwealths war is a visitation to be faced, like famine or pestilence, only with the purpose of preventing its recurrence and protecting the liberty for which they stand. By the ruling classes in Prussia it is treated as a wholesome as well as a necessary exercise, and naturally they look upon the opposite opinion as a confession of weakness and a symptom of national decay. To them Britain is a power which has used the dissensions of Europe to annex a quarter of the world, and has now by its decadence lost any title to empire which it ever

<sup>1</sup> 'The landed nobility . . . which forms a hierarchy of which the King of Prussia is the supreme head, sees with terror the democratization of Germany and the growing force of the socialist party.'—*Confidential Report to M. Stephen Pichon, Minister for Foreign Affairs, on German public opinion, according to French diplomatic and consular agents. Paris, July 30th, 1913. Yellow Book published by the French Government, December 1914 (English translation)*, p. 16.



possessed. To men honestly convinced that in politics 'might is also the supreme right,'<sup>1</sup> and firmly believing in their own nation as the strongest in the world, it is intolerable that Britain should continue to rule a quarter of its surface. World-empire, and its necessary condition, the mastery of the seas, could scarcely seem otherwise than the natural inheritance of a nation that had won the hegemony of Europe.

The Germans, however, have not been content to rest their claim to world-supremacy merely on superior force, nor indeed have they needed to do so. Their nationalism, suddenly realized, has made them vividly conscious of their own pre-eminence in music, literature, learning, philosophy, science, and the industrial arts. They have evolved a culture which they rightly regard as the greatest of national achievements, and this consciousness has effected them in much the same way as the sense of a newly acquired liberty affected the French. To France her freedom seemed so glorious a thing that she deemed herself destined to enforce it on the world. And so with the suddenly realized nationalism of the Germans. Justly enamoured with the splendour of their own civilization, they conceive themselves as charged with a mission to do for mankind what Prussia did for Germany herself.

Project of imposing "Germanism" on the world contrasted with unconscious utility of the principle embodied in the British Commonwealth.

'Neither the ridiculous clamours for revenge of the French jingoes, nor the English gnashing of teeth, nor the wild gestures of the Slavs, will turn us from our end, which is to strengthen and to extend *Deutschtum* (Germanism) throughout the entire world.'<sup>2</sup> The words are those of an official, but they reflect sentiments prevalent in learned, and even in religious circles, which have served to invest schemes of far-reaching conquest with the glamour

<sup>1</sup> von Bernhardi, *Germany and the Next War*, p. 23.

<sup>2</sup> *Secret Report on the strengthening of the German Army*, Berlin, March 19, 1913. *Yellow Book published by the French Government*, December 1914 (English translation), p. 8.

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of a crusade. The German nation is honestly concerned to achieve greatness by spreading its own culture over all the world, blind to the truth that for each individual and race the only culture is their own. The system which the world most needs is that which best enables each man and each community of men to develop their own character, and develop it, so far as may be, for themselves. Like all people bred to autocracy, the Germans have failed to see that this Empire which includes a quarter of the world has grown in response to this need, and has only endured because it has shown itself better able to respond to it than others. Its kingdom was one that came not with observation. Had Napoleon conquered the world, his empire would not have endured, because it was a project deliberately conceived, and not one which grew from human needs too wide and deep to be wholly conscious. And so with the Latin Emperor's Teutonic heir. If Germany were to conquer the world, she could not hold it or compel it to be German. The only empires which persist are those which are neither Spanish, French, German, nor British, but human. For empires cannot be held as Napoleon would have held Europe, or Germany has held Posen or Alsace-Lorraine. Empires must hold together, and that they can do, only in so far as the peoples they include find that they answer to the needs not of one, but of all. The British Empire has held together in so far as Britain has discovered principles and evolved a system which are not British but human, and can only endure in so far as it grows more human still. 'It was not the Romans that spread upon the world; but it was the world that spread upon the Romans, and that was the sure way of greatness.'<sup>1</sup>

<sup>1</sup> Bacon's *Essays*, xxix.

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Freedom  
jeopardized by  
the schism  
with  
America,  
as shown  
by the  
present  
peril of  
the British  
Common-  
wealth.

Bacon's aphorism is far more nearly applicable to the Commonwealth planted by the country of his birth. Many and various nations have spread their branches upon it, covering its frame so closely that they are prone to forget that it is there. Only when the storm strikes it do they realize what freedom their growth has gained from its support, or what fair promise of flower and fruit would perish in its fall. The principle of freedom, like that of life, is indestructible, but not the systems through which it is realized, and many harvests of liberty may be lost in their ruin, to the lasting impoverishment of the world. It is idle to suggest that so many men would be so free as they now are if Britain had perished in the struggle with France and Spain. It is equally futile to question that freedom would sustain the most serious check it has ever received if the British Commonwealth were to perish in the present struggle, its Dominions yielding to the virtual control, and its great dependencies to the direct authority of Prussia. We have but to imagine the United Kingdom reduced to the position of Denmark or Holland, trembling at the Prussian nod, India and Africa ruled from Berlin, South Africa, Australia, and New Zealand unable to withstand the dictates of a power dominant at sea as well as in Europe, to realize the disastrous nature of a schism which has led the hundred millions who now inhabit the United States to treat the American continent as a separate planet consecrated to liberty, and to regard the freedom of nations outside it, and the task of extending its principles to Asia and Africa, as beyond the range of their active interest.

The creation of a system whereby the principle of the commonwealth could be realized for a territory so much vaster than the British Isles as is that of the United States was a notable step in the history

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The  
schism  
of the  
Common-  
wealth a  
set-back  
to the  
cause of  
freedom.

of freedom ; and, as will be seen at a later stage of the inquiry, it was one which made possible an organization on similar lines in Canada, Australia, and South Africa. The British Commonwealth owes an immeasurable debt to the example set by the first colonies after their secession. But to represent the schism itself as a step in the history of freedom argues a failure to grasp what freedom means, or to recognize the persistence of the forces by which it is threatened. Across the Atlantic the people of the British Isles had planted free communities in a virgin soil. The expansion of the Commonwealth to America was of supreme importance because it meant that people from all Europe who settled there were to leave behind them the traditions of Roman autocracy to inherit those of Teutonic self-government. But were they to inherit freedom merely for themselves, or were they to take their share in the task of guarding the freedom of younger and weaker communities? Nay, rather were they to assume a share in the greatest and most delicate of all human tasks, only to be accomplished by centuries of labour—the task of opening freedom to the backward races of the world? So far as that part of America which is now included in the United States is concerned, these questions were destined to be answered in the negative. The burden was not to be assumed by the people who now inherit the first colonies of the British Commonwealth. Neither in Britain nor yet in the colonies was forthcoming the vision to foresee the widening tasks of the great Commonwealth, nor the statesmanship to initiate the future inhabitants of America thereto. The first opportunity of realizing this project of a commonwealth was missed, and never were the springs of human endeavour more perilously weakened, nor the hands which

record its triumphs more grievously stayed on the dial of time.

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That the schism of 1783 did not lead to a positive set-back in the history of freedom was due to a contemporary revolution in industrial methods. An access of wealth secured for Britain by a sudden advance in mechanical invention alone enabled her to defeat the forces which Napoleon marshalled against her. 'The fact is that the triumphant issue of the great French war was largely, if not mainly, due to the cotton-mill and the steam-engine. England might well place the statues of Watt and Arkwright by the side of those of Wellington and Nelson, for had it not been for the wealth which they created she could never have supported an expenditure which, during the last ten years of the war, averaged more than eighty-four millions a year, and rose in 1814 to one hundred and six millions, nor could she have endured without bankruptcy a national debt which had risen in 1816 to eight hundred and eighty-five millions.'<sup>1</sup> In its immediate as well as in its ultimate results the Industrial Revolution is comparable only to that earlier revolution in methods of transport effected by Henry the Navigator. Britain acquired a singular facility for converting cotton, wool, and other products of the distant continents into articles of human consumption. The wealth which she drew from these manufactures enabled her to vanquish Napoleon and to save freedom for a world which he tried to combine for her destruction.

The  
British  
Common-  
wealth  
saved after  
the loss of  
America  
by the  
Industrial  
Revolution.

The movement, which for three centuries had been bringing the people of all the continents into closer touch with each other, was suddenly accentuated by the need of British manufactures for raw materials of every kind. Their insular position, which pro-

The second  
British  
Empire,  
a product  
of the  
Industrial  
Revolution,  
has de-

<sup>1</sup> Lecky, *History of England*, vol. vii. p. 280.

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veloped into  
a system for  
the general  
protection  
of liberty  
and its  
gradual ex-  
tension to  
the back-  
ward races.

tected the British Isles from the ravages of war and enabled their inhabitants to develop new industrial methods, gave them a lead in the field of production; and this lead went unchallenged till the union of Germany secured the first long period of peace, not merely to Germany herself, but to Western Europe. It was therefore, with minor exceptions, the people of Britain, not those of Europe, who came in touch with the distant continents. It was they who colonized Canada, which the Loyalists, driven from the United States, together with the French settlers, had occupied as an outpost of the older Commonwealth in the continent which the new one aspired to monopolize. It was they who continued the settlement of South Africa, begun by the Dutch, and who colonized New Zealand and the continent of Australia. It was British traders who came into ever closer contact with the ancient peoples of Asia, Africa, and the Southern Seas. Ere the nineteenth century was reaching its close, the British had extended their dominion over most of the vacant territories open to settlement, and the greater part of the races who inhabit the Tropics. Trade led to dominion, and in laying the foundations of their own freedom the people of the United Kingdom were committed to the government of vast multitudes of men unable to govern themselves. In doing so they rose, however imperfectly, to the conception that freedom is the ultimate goal of government, not only for themselves, but for the backward races as well. They grasped the principle that these races are not to be treated as instruments of the Commonwealth, but as ends in themselves, and are to be included in its circle and recognized as co-heirs of the spiritual inheritance which it exists to realize. They are to be incorporated in a state which, before all others, has stood for self-government, precisely for

the reason that they are as yet unequal to that task, but always with the end in view that in time they may learn to rise to it. The British, of course, had no such object in visiting the distant continents. No more is it to promote their future welfare that an industrialist employs thousands of workmen. Yet having employed them, he contracts a moral responsibility for their welfare, which, in so far as he is a man capable of rising above mere appetite for wealth, he will begin to recognize. And so with the British people when contracting commercial relations with the peoples of India and Africa. The task opening before them in the nineteenth century was, not merely to plant in the still vacant regions of the earth kindred communities capable of governing themselves, but slowly to indoctrinate the rudiments of freedom in alien societies who had yet to study its grammar and syntax. For the vast section of the backward races included in its circle the British Commonwealth is the best, and for the time being the only earnest of liberty, as they themselves have realized now that its existence is visibly threatened.<sup>1</sup> The people of Britain have learned to regard them as fellow-citizens incorporated in the same Commonwealth with themselves to the intent that they may qualify for those fuller privileges which, when rightly viewed, are coincident with its wider tasks. Freedom, like the principle of life in the physical world, is inseparable from growth. Commonwealths are the corporeal frame in which it is incarnate, and they cease to flourish when they cease to extend the principle that inspires them in an increasing degree to an ever-widening circle of men. To have gathered to itself so vast a proportion of the races who have yet to learn what freedom means is the surest proof that the Commonwealth is

<sup>1</sup> See Note A at end of this chapter, p. 707.

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IX

Effect of  
the schism  
in divorc-  
ing the  
people of  
the United  
States  
from re-  
sponsibili-  
ties for  
backward  
races.

still true to the principle which inspires it. The British Empire is not the less a commonwealth, but rather the more so, for having admitted countless multitudes whose political notions have not yet risen beyond the duty of obedience to a tribal patriarch or a monarch invested with divine authority. In truth, this world-wide state is not, as some historians have vainly taught, an outcome of blunders, accidents, and crimes, but of the deepest necessities of human life. It is the project of a system designed on the only scale which is capable of meeting those needs.

One of the worst consequences of the schism which alienated the people of the United States from the parent Commonwealth has been its effect in limiting their conception of liberty and of the duty which free communities owe to their fellow-men. The nature of their quarrel with Britain committed them to the view that parliamentary government is coincident with freedom, and not merely a highly advanced stage in its achievement. In their subsequent experience there was little to bring home to them the truth that freedom is an art whose elements must be acquired as a second nature before it can be practised. Cut off from the British Commonwealth, the Americans were divorced from the obligations of a higher civilization about to be laid upon it. They ignored the fact that the majority of mankind are still incapable of self-government, and that unless governed by commonwealths they must, in the alternative, be ruled by states little disposed to lay the foundations of a system at variance with their own.

The United  
States im-  
pelled by  
threats of  
the Holy  
Alliance to  
champion  
freedom  
throughout  
the  
American  
continent.

From the ultimate error of supposing that a nation is not called upon to vindicate freedom, except for itself, the people of the United States were saved by the magnitude of the continent in which they lived. Some years after Napoleon's fall, the monarchs of Russia, Austria, and Prussia combined in a 'Holy



Alliance' to resist the growth of popular government.<sup>1</sup> In 1823 the allied sovereigns addressed themselves to the task of restoring the principle of autocracy, not merely in Europe but in Spanish America, where monarchy was fast tottering to its fall. This meant the exclusion of Great Britain from trade with Spanish America; and Canning suggested to Rush, the American Ambassador, that the United States should combine with Great Britain to confine the activities of the Holy Alliance to the continent of Europe. 'When Rush's despatches relating his interviews with Canning reached Washington in September (1823) the President was plunged into a sea of doubt and perplexity. He fully realized the importance of the question as he saw plainly the approach of the dreaded clash; it was the spirit of absolutism, angered and jealous, which was seeking to arrest the progress of democracy in the Western Hemisphere. To him the subjugation of the South American colonies by France, or by the combined forces of the Holy allies, pointed directly to the absorption of those colonies by the great powers and their forcible return to the sway of imperialism. It meant the hedging in of the United States by its natural enemies, and the possible overthrow of republican institutions at home.'<sup>2</sup> Monroe consulted his predecessors in the presidential office, including Jefferson, who, writing from Monticello on October 24, 1823, replied as follows:—

'The question presented by the letters you have sent me is the most momentous which has ever been offered to my contemplation since that of Independence. That made us a nation, this sets our compass and points the course which we are to steer through the ocean of time opening on us. And never could we embark on it under circumstances more auspicious.

<sup>1</sup> See above, p. 87.

<sup>2</sup> Henderson, *American Diplomatic Questions*, p. 321.

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Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe and peculiarly her own. She should therefore have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicil of despotism, our endeavour should surely be, to make our hemisphere that of freedom. One nation, most of all, could disturb us in this pursuit; she now offers to lead, aid, and accompany us in it. By acceding to her proposition, we detach her from the band of despots, bring her mighty weight into the scale of free government, and emancipate a continent at one stroke, which might otherwise linger long in doubt and difficulty. Great Britain is the nation which can do us the most harm of anyone, or all on earth; and with her on our side we need not fear the whole world. With her then, we should most sedulously cherish a cordial friendship; and nothing would tend more to knit our affections than to be fighting once more, side by side, in the same cause. Not that I would purchase even her amity at the price of taking part in her wars. But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. Its object is to introduce and establish the American system, of keeping out of our land all foreign powers, of never permitting those of Europe to intermeddle with the affairs of our nations. It is to maintain our own principle not to depart from it.' <sup>1</sup>

Madison wrote in a similar strain, and the result was Monroe's famous message to Congress of December 2, 1823, in which he announced that the designs of the Holy Alliance with reference to Spanish America

<sup>1</sup> Henderson, *American Diplomatic Questions*, pp. 321-2.

would be regarded as a menace to the United States and resisted as such.<sup>1</sup>

Responsibility for the cause of freedom throughout the entire length of the American continent was thus consciously assumed by the people of the United States. But they were never called upon to make any serious effort or sacrifice in its cause. The secession of the American colonists had not altered the fact that the British Commonwealth could not afford to see the principle of autocracy established over any considerable portion of the distant continents. The survival of that principle in Europe was still the real menace to freedom, and the task of grappling with it was left to the people of the British Isles. The final and only effective pledge for the liberties of the world was the mastery of the sea in the hands of a state which stood for freedom, and the defection of the American colonies left that burden to rest where it had previously rested—with the British Isles. From the time of Monroe, the supremacy of Britain at sea was tacitly accepted as a shield behind which the people of America could live, without concerning themselves with the affairs of the older world. In 1823 the United States would scarcely have been strong enough to defy the concerted autocracies of Europe, unless the President had known that he could count on British support. But, before the middle of the century, the Republic could have built and maintained fleets stronger than any which the enemies of freedom in Europe could have placed in the Atlantic. Yet no such effort was made in America. The people of the British Isles, as the price of their own existence, were still obliged to face any sacrifice necessary to retain the control of the sea, and, so long as they are able to do so, no commensurate sacrifice is imposed on the United States.

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Outside  
America  
the general  
responsibility  
for the main-  
tenance and  
extension  
of freedom  
throughout  
the world was  
concentrated  
on the  
British Isles.

<sup>1</sup> See Note B at end of this chapter, p. 708.

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Results of  
the schism.  
(1) that the  
Americans,  
divorced  
from the  
ultimate  
problems  
of politics,  
have failed  
to grasp  
their nature  
or to con-  
tribute  
materially  
to their  
solution.

As in the seventeenth and eighteenth centuries, so in the nineteenth, the British Commonwealth, as the price of its own existence, was forced to extend its commerce and settlements to the uttermost parts of the world. It was the people of Britain who were brought thereby into touch with the ultimate problem of politics, that which arises from the mutual contact of the principal families of mankind, and of one level of civilization with another. It was they who learnt by experience that those relations cannot be limited to trade. It was they who were forced by responsibility to recognize that a civilized state must intervene to redress the anarchy into which traders, armed with the resources of civilization, plunge the society of primitive races. It was they who recognized first the necessity and then the duty of creating a new order in the wake of, and indeed in advance of, trade. It was they who in time came to recognize that order itself is to be valued only as the necessary foundation for the further extension of liberty. It was the older Commonwealth, and not the new one, which was led by contact with ultimate facts to assume the task of preparing for freedom the vast multitude of human beings who have yet to realize what freedom means. Cut off from this experience, the people of the United States have never yet awoken to these primary truths. As a practical people, they have assumed the right of the continents to trade with each other, and the necessity of their doing so; but they have never faced the evident truth that those relations cannot in the end be limited to trade. On the contrary, they have fallen into the habit of regarding the government of backward races as a crime rather than a duty.<sup>1</sup> A

<sup>1</sup> 'The United States Ambassador, Dr. Page, speaking last night at a dinner given by the Newcastle and Gateshead Chamber of Commerce, in Newcastle, said that if anyone thought that the United States would acquire Mexico or establish a protectorate over it they missed the key to the whole development of Republican institutions. The Mexicans were sus-

slight deviation from that principle, made in the Philippines as the direct consequence of the Spanish War, has since remained like a thorn in the national conscience. The Democratic party, at present in power in the United States, is expressly committed to reversing that act.

The general result is that the United States, a free state which contains more than twice the population of the British Isles, has never advanced beyond the conception of the national commonwealth. Americans have fallen into the habit of treating their continent as a sanctuary to which the people of Europe must come if they desire to enjoy the blessings of freedom. But the presence of the negro in their midst has taught them that a mixture in one country of an advanced with a backward civilization is itself the greatest menace to liberty, and it has become the cardinal principle of their system that this sanctuary is to be closed, so far as may be, to all but the children of Europe. To the question, how the majority of mankind who are not Europeans are to be initiated to the mysteries of freedom, they have never felt themselves called upon to provide an answer.

For the older Commonwealth, it has been left slowly and painfully to feel its way to the truth that the merely national commonwealth is no more commensurate to the needs of the modern world than the city republic in the age of Edward I. The task of creating a system whereby not cities nor classes, but whole peoples, sundered by all the width of the world, and drawn from every level of human progress, can be rendered subject to the rule of a common law, and that law itself rendered amenable to public opinion,

picious of the United States, unfortunately, because they did not know that the one fundamental and unalterable fact of the policy and principle of the United States—that which clinched it as a key-stone—was that people must govern themselves. There was no receding from that principle. It applied to Mexico and all other Southern States.'—*The Times*, February 7, 1914.

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(2) That the Americans have never arisen to the conception of a commonwealth wider than one based like their own on a common nationhood.

The people of the British Commonwealth educated by contact with facts to the conception of a commonwealth which is neither British nor national, but human in its scope.

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Effect of  
the schism  
in reduc-  
ing the  
proportion  
of citizens  
in the  
British  
Common-  
wealth fit  
to share  
in the task  
of its gov-  
ernment.

has remained where it rested in the eighteenth century—with the Commonwealth which centres in the British Isles. It is an immense step in the history of the world, the greatest ever made, that a quarter of its inhabitants, and that quarter an epitome of all the stages of human development, should have been united into one international state, without that state abandoning, as did Rome, the principle of the commonwealth for that of autocracy.

To endure, however, a commonwealth must contain a sufficient proportion of citizens competent to share in the tasks of its government, and, in fact, sharing them. No people are more keenly alive to the importance of this principle than the Americans themselves. Their marked reluctance to consider the inclusion of Mexico in their Commonwealth is a case in point. The prospect, indeed, would lose half its terrors if the inclusion of Mexico in the Union could be counterbalanced by the inclusion of Canada. It is now, rather than in 1783, that the nature of the blow dealt to freedom by the great schism is becoming apparent. The two and a half millions of citizens capable of government, of which the British Commonwealth was then deprived, were but a fraction of its future losses. During and after the Napoleonic wars the population of the United Kingdom was pouring into the United States, impelled in no small degree by the poverty to which those wars had reduced the labouring classes. The factory system, created by the Industrial Revolution, while enormously increasing the wealth of the few, swelled the number of the poor and greatly enhanced the dreariness of their lot. Millions found new homes in America, and it was not until 1838 that more than five thousand emigrants in any one year turned elsewhere. During the period when the Commonwealth was absorbing multitudes of Asiatics and Africans, the natural in-

crease of its ruling race was largely diverted to the territories it had lost.

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In order to grasp the significance of those facts it is necessary to suppose that in the nineteenth as well as in the previous century the statesmanship needed to avoid the schism had not been wanting. Clearly it is not thinkable that the hundred millions who now inhabit the United States could be members of a world-wide commonwealth, for the conduct of whose external affairs they exercised no greater control than do the people of Canada, Australia, New Zealand, or South Africa. In the long run the schism could only have been avoided had constitutional changes been made whereby the inhabitants of North America would have assumed precisely the same responsibility for the general affairs of the Commonwealth as that which rests on the people of the British Isles. It is needless to discuss here whether such changes could in fact have been made; but supposing that they had been effected, supposing that the people of North America had contracted exactly the same responsibilities for the inhabitants of Asia and Africa as those assumed by the people of the British Isles, it is not unreasonable to argue they would have developed an attitude of mind on the subject not different from theirs. Experience would have led them to see that more primitive societies are invariably deranged by unregulated intercourse with Europeans, which must be controlled because it cannot be prevented; that the people of Europe cannot touch more primitive societies without deranging them. They would have recognized that the stronger civilization has a responsibility for the weaker which it cannot evade. No thoughtful man would question the principle, and had the United States become an organic part of the British Commonwealth its people must also have realized that the responsibility is one

What results would have followed the incorporation of America with the British Commonwealth.

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Its ultimate  
effect on  
the peace of  
the world.

that civilized men can discharge only when organized as a state, and through the agency of a government.

Had American society remained with, and become an organic part of the Commonwealth, its future composition would not have been affected thereby. It would still have become, as Canada is fast becoming, not merely British, but European. America would still have afforded an asylum for emigrants from all the kingdoms of Europe, and a school in which the traditions of autocracy could be unlearned and exchanged for those of the commonwealth. But on entering it, they would also have assumed the first of all human responsibilities, while those from the British Isles would not have abandoned it. Whilst enlarging its bounds in Asia, Africa, and the Pacific so as to include hundreds of millions who must for centuries remain incapable of assuming the burden of government, the Commonwealth would simultaneously have been drawing from Europe millions capable of reinforcing the moral as well as the material resources of government. To-day some forty-five millions of Europeans are responsible for the peace, order, and good government of some three hundred and fifty millions of the backward races—close on one-third of the non-European races of the world. But had the Commonwealth preserved its unity, by realizing the principle upon which it is based, that stupendous burden would to-day have rested upon upwards of one hundred and fifty million citizens qualified for the tasks of government. A much larger proportion of civilized men would be organized to fulfil the first duty of civilization. And had means been found for incorporating the Americas, the same solution must also have been applied in the colonies south of the line. The government of the Commonwealth would not have rested, as it still does, on a single column with a base no broader than the British Isles. This



world-state which gives, not only to its members, but to all human society, such stability as it now has, would have rested on an arch which, double spanned, and based on foundations in four of the continents, would have been unshakable in its strength. Such projects as it is now taxed to defeat could never have been conceived. Instead of striving to avert destruction, it would have put itself outside the reach of such projects, which cannot be attempted without involving the greater part of the world in war, and dislocating the whole framework of human society. The primary function of a world-commonwealth is to prevent such wars, and that it can do, if all its citizens capable of government are really responsible in peace for maintaining peace; but so long as none but the inhabitants of the British Isles are really responsible for preventing war, the relative strength of the Commonwealth will continue to decline. The chance of suddenly striking at its heart will encourage autocracies to prepare the blow. Such periods of world-war as closed in 1815 and opened once more in the present year are possible only when the British Commonwealth becomes weak enough to invite destruction. And if destroyed, the epoch of cataclysm would never be closed until there had emerged from the ruins a like commonwealth, and one resting on wider foundations.

How to cure this defect by extending responsibility for the general peace of the Commonwealth from the British Isles to all the self-governing Dominions is the problem we are facing to-day, but one never presented to the American colonies. They had never demanded a voice in the issues of peace and war, as Scotland had done, and had never been asked to share in the burdens involved, except in so far as their own local defence was concerned. The quarrel which led to the schism grew out of

The  
Imperial  
problem  
and what  
it is.

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the general failure to realize a system through which Americans could manage the 'dominion' affairs of America for themselves. By the younger colonies that problem has now been solved. The people of Canada have evolved a system whereby they have assumed a genuine responsibility for all Canadian affairs; and so also with the peoples of Australia and South Africa, following in their steps. All this, unlike the Americans, they have done without disrupting the Commonwealth. The question, then, which still awaits its solution is, how they are to assume a genuine responsibility for the first, last, and greatest of all public interests, those which determine the issues of peace and war. Short of that final responsibility the growth of self-government can no more be stayed in the Dominions than it could be in Britain or in the United States; and until that final responsibility is shared between all the peoples of the self-governing Dominions with those of the United Kingdom, this Empire will remain what it has been, since its first colonies were planted in Ireland, not a commonwealth, but the project of a commonwealth, which must be completed if it is not to be brought to an end.

To endure, the Commonwealth must be realized by extending the ultimate burden and control of government to all the self-governing Dominions.

If the nature of the Commonwealth be considered the thing is self-evident. It is a state in which government rests on the shoulders of all its citizens who are fit for government. It exists to enlarge that class, and can afford to spare from its difficult task none who are equal to sharing it. A commonwealth in which the final responsibilities of government have come to be regarded as the peculiar attribute of citizens inhabiting one locality is ceasing to realize the principle of its being. The American Commonwealth could never have endured if the powers and burdens of the general government had been limited to the states which formed the original

union. The loyalty of the West would have atrophied, and the project of a commonwealth wide enough to unite the shores of the Atlantic with those of the Pacific would never have matured. From the fatal schism of the eighteenth century many truths have been learned and applied in the older Commonwealth, but this, the most vital of all, has not been amongst them. The final responsibility for its maintenance was then limited to Great Britain, and has never since been extended beyond the British Isles. It is true to say that self-government has never been realized for any portion of this vast Commonwealth other than the United Kingdom itself. It is there and there only that political responsibility for the maintenance of freedom throughout this vast structure rests, and with it the future of freedom in all the continents but that of America. This, at any rate, can be prophesied with absolute certainty, that the British Empire, as at present established, cannot endure, unless it can realize its character as a commonwealth in time, by extending the burden and control of its supreme functions to every community which it recognizes as fit for responsible government. Unless that is done the self-governing Dominions must inevitably follow to the bitter end the path trodden by the first American colonies. This project of a commonwealth, through which an ever-increasing circle of civilized men can discharge their duty, not merely to each other, but also to races weaker and more backward than themselves, will fail, and in that failure freedom will suffer more than it suffered by the schism of the eighteenth century.

It is idle to deplore a past we cannot change. Our duty is to see the past as it was in the light which the present casts upon it, to see failures as failures, and not to flatter our vanity by treating

Attempts  
to ignore  
these  
truths  
the worst  
danger to  
freedom.

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## IX

them as triumphs in disguise. For, if the world's freedom, rather than national exploits, are the true goal of political endeavour, the schism of the Commonwealth in the eighteenth century was a failure second to none. Now, as then, the real danger to freedom is failure to understand what it means, or to see that it can only be realized through the medium of states in which it is incarnate. But most dangerous of all is the failure to realize that the Commonwealth cannot endure unless it fulfils the principle of its being. Burke and his contemporaries could scarcely have foreseen that the British Commonwealth was destined in less than a century to include one-quarter of mankind; but he, at any rate, should not have mistaken the British constitution, as it then stood, for the last word in the progress of liberty. A mind like his might well have divined that the growth of self-government in the colonies could not be arrested short of the point already attained in England itself. It is not for us to blame our predecessors, but it is only by seeing their errors that we can hope to avoid them and 'duller should we be than the fat weed that rots itself in ease on Lethe's wharf' if we suffered ourselves to believe that the modern Dominions can for ever forgo the burden of controlling their foreign affairs. Now, as then, there are not wanting those who seek to evade this conclusion by contending, either that the Imperial Government represents the Dominions, or else that the British voters, to whom it is answerable, do not control it in foreign affairs. In their zeal to justify things as they are, they treat the elementary conditions of responsible government either as illusions, or as dust which governments must use for blinding the eyes of those they rule. Aversion to the effort which change requires dominates their minds, and so in 1914 as in 1785 they proclaim that the growth

of the Commonwealth is now complete, and that for us it remains merely to preserve it for ever as it is.

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IX

Nought in the distance but the evening, nought  
To point our footsteps further !

At the thought,  
A great black bird, Apollyon's bosom-friend,  
Sailed past, nor beat his wide wing dragon-penned  
That brushed our cap—*perchance the guide we sought !*

In truth there is unity in human affairs, and laws which work themselves out with the same uncompromising logic as those of Nature herself. It is not by ignoring those laws, but only by learning and obeying them willingly, that men may reach to freedom and dominate fate. The claim which a commonwealth makes on its citizens is in its nature absolute as that which a despotism makes on its subjects, and allegiance can no more be rendered by one citizen to two commonwealths than homage can be paid by one subject to two kings. The people of Britain and those of the Dominions have yet by some solemn and irrevocable act to decide whether, in the last analysis, it is to this mighty Commonwealth as a whole, or merely to the territory in which they live, that their final allegiance is due. Citizens of no mean city, we have yet to declare what for us and for those who come after us that city is to be. There is the Imperial Problem, the final enigma, whose answer the secular sphinx abides, knowing that, as it is found or missed, so, for this, the noblest project of freedom that the world has seen, are the issues of life and death. But at least the terms of the riddle are clear, as they were not to those by whom this Commonwealth was rent in twain. They were men who knew not what they did, men for whom it was difficult to foresee the tasks which time would impose upon it, or how heavy the freight and

Conclusion  
of the whole  
matter.

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how dear the treasure which freedom was committing to its charge. For they saw too dimly the path by which they had come to descry the goal to which it might lead. To us, if we choose to see it, the path is plain. Long and tortuous though it be, we can discern its course winding up from the valleys, and sometimes descending again from the hills, but always in the end leading the footsteps of those who have followed it to a loftier station and a wider view. The glory of that sight is with us to confirm our purpose and nerve our will, as through the night we face the tempest which rages to overwhelm us. And what we scarcely saw, when the noon was high and the sky clear, darkness and storm shall reveal in flashes—the path, breasting a summit higher than mortal feet have climbed, yet nearer and easier to win than we knew.

## NOTE A

RECOGNITION BY RACES IN ASIA AND AFRICA OF THE BRITISH  
COMMONWEALTH AS NECESSARY TO THEIR FREEDOM.FREETOWN, *August 26th, 1914.*

‘To his Excellency Sir EDWARD MARSH MEREWETHER, K.C.V.O.,  
C.M.G., Governor and Commander-in-Chief of the Colony  
and Protectorate of Sierra Leone.

‘YOUR EXCELLENCY,—We, the undersigned, Muhammadan Imams (Alimamis), on behalf of ourselves and the Muhammadan community of the Colony, beg leave to approach your Excellency, through the medium of this paper in order to tender, through your Excellency, our sincere sympathy to his Britannic Majesty our Sovereign for the present European war in which Great Britain has been involved. . . .

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691.

‘Our anxious wish for victory for Great Britain in the present war has not been without very many good reasons: If we are here to-day practising our religion without molestation, if we, in fact if the black race are to-day sharing with other races the blessings of freedom, there is no doubt that it is to Great Britain that we owe this great privilege. Certainly, for, but for Great Britain, with the possession of Africa by the several European Powers, all her native population would have become human chattels to their respective Over-Lords. Some of us have had the privilege of travelling to foreign ports, and from our experience of the treatment received by natives at the hands of their foreign rulers, especially the Germans, whose destruction may God expedite, we cannot but come to the above conclusion. It was a Muhammadan of this Colony who said many years ago, and we still endorse the statement, that if the Sultan of Turkey, the Commander of the Faithful, were to invade and capture Sierra Leone, so that the English were obliged to withdraw therefrom, he would cast in his lot with the English and go with them whithersoever they tended rather than remain with the Commander of the Faithful. Hence it is that at the outbreak of this deplorable war we have been greatly alarmed, and have been rather anxious for victory for Great Britain.

‘Being powerless and feeble we have no other means of helping our Great King in the war than that of prayer to Allah, the All-Powerful, and He may be graciously pleased to grant that Great Britain may come out victorious in the present struggle at an early date, so that she may continue to maintain her supremacy among the Powers. This prayer we have been daily offering since the outbreak of hostilities, and will continue

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our supplication to the end of the war, and we faithfully believe that our prayer will be accepted and our wish realised, considering that England's action is based upon righteousness.

'We beg leave most respectfully to subscribe ourselves as

(In Arabic)

Almami Humaru Jamburier (his X mark)	. Foulah
Alfa Muhammad Alghah (his X mark)	. Yoruba
Alpha Orhman (his X mark)	. Yoruba
Alfa Darami (his X mark)	. Mandingo
Alfa Abumba Sillah (his X mark)	. Mandingo
Almami Sillah (his X mark)	. Temne
Foday Sheikhu (his X mark)	. Susu
Ali Kamara (his X mark)	. Susu
Almami Foday Yakka (his X mark)	. Limba
Alfa Murhtur Tarawali (his X mark)	. Sarakuli
Almami Bocari (his X mark)	. Mendi
Almami Kangbe (his X mark)	. Lokko
Santigi Musa (his X mark)	. Torodo
Alfa Humaru (his X mark)	. Yoruba

'Written by H'Dirud Deen, Secretary Committee for Moh. Education and Hon. Sec. to Muhammadan Alimamis of Freetown.'

More significant still is the following extract from *The Times* of August 29, 1914 :

POONA, August 27.

'The Indian agitator Mr. Tilak, who was sentenced to six years' transportation in 1908 for publishing seditious articles and was released last June, made a speech here to-day urging every one to support the Government in every way possible. The present, he said, was not the time to press for reforms. They must sink all differences. The presence of their rulers was desirable even from the point of view of self-interest. *Reuter.*'

## NOTE B

### MESSAGE OF PRESIDENT MONROE DELIVERED TO CONGRESS ON DECEMBER 2, 1823

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695.

'In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced, that we resent injuries, or make preparations for our defence. With the movements in this hemisphere



we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect, from that of America. This difference proceeds from that which exists in their respective governments. And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity this whole nation is devoted. We owe it, therefore to candour, and to the amicable relations existing between the United States and those powers, to declare, that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power, we have not interfered, and shall not interfere. But, with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration, and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States. In war between those new governments and Spain we declared our neutrality at the time of their recognition; and to this we have adhered, and shall continue to adhere, provided no change shall occur, which, in the judgment of the competent authorities of this government, shall make a corresponding change on the part of the United States indispensable to their security.

The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced, than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed, by force, in the internal concerns of Spain. To what extent such interpositions may be carried on the same principle, is a question in which all independent powers, whose governments differ from theirs, are interested; even those most remote, and surely none more so than the United States. Our policy, in regard to Europe, which was adopted at an early age of the wars which have so long agitated that quarter of the globe, nevertheless remains the same; which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm and manly policy; meeting, in all instances, the just claims of every power—submitting to injuries from none. But, in regard to those continents, circumstances are eminently and conspicuously different. It is impossible that

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the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethern, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain, and those new governments, and their distances from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course.'<sup>1</sup>

<sup>1</sup> *The Annual Register, 1823; Law Cases and Narratives*, pp. 193-4.

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